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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 756.

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL, OF THE STATE OF TEXAS, APPELLANTS,

vs.

EASTERN TEXAS RAILROAD COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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1 *Caption.*

Be it Remembered That at a Regular Term of the United States District Court for the Western District of Texas, holding its session at Austin, Texas, and which term began on June 11th, A. D. 1917, and continued in session to and including the 22nd day of September, A. D. 1917, there came on to be heard and determined before the Honorable R. L. Batts, United States Circuit Judge for the Fifth Judicial Circuit, Honorable Gordon Russell, United States District Judge for the Eastern District of Texas, and Honorable W. R. Smith, United States District Judge for the Western District of Texas, on September 20th, 21st, and 22nd A. D. 1917, the application of the plaintiffs for the issuance of an interlocutory injunction under the provisions of Section 266 of the Judicial Code in cause No. 295, Eastern Texas Railroad Company et al., vs. The Railroad Commission of Texas et al., pending on the Equity Docket of said Court at the Austin Division.

2 In the District Court of the United States for the Western District of Texas, Austin Division.

Equity, No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Second Supplemental Bill of Complaint.

Filed August 4, 1917.

To the Honorable Judge of the said United States District Court:

Now come the Eastern Texas Railroad Company; The Galveston Harrisburg & San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; Groveton, Lufkin & Northern Railway Company; Gulf, Colorado & Santa Fe Railway Company; Fort Worth & Denver City Railway Company; Panhandle & Santa Fe Railway Company; The Houston East & West Texas Railway Company; Houston & Texas Central Railroad Company; St. Louis Southwestern Railway Company of Texas; San Antonio & Aransas Pass Railway Company; Texarkana & Fort Smith Railway Company; Texas Midland Railroad Company; Texas & New Orleans Railroad Company; Texas & Pacific Railway Company; El Paso & Southwestern Railroad Company of Texas; El Paso & Northeastern Railroad Company; Texas Mexican Railway Company; The Jeffer-

sas & Northwestern Railway Company; Trinity Valley Southern Railroad Company; St. Louis, Brownsville & Mexico Railway Company; Beaumont, Sour Lake & Western Railway Company; Orange & Northwestern Railway Company; The Rio Grande, El Paso & Santa Fe Railroad Company; Kansas City, Mexico & Orient Railway Company of Texas; Angelina & Neches River Railroad
3 Company; Shreveport, Houston & Gulf Railroad Company; The Wichita Valley Railway Company; Chicago, Rock Island & Gulf Railway Company; James A. Baker, Receiver of the International & Great Northern Railway Company; J. W. Robbins, Receiver of the Trinity & Brazos Valley Railway Company; A. R. Ponder, Receiver of San Antonio, Uvalde & Gulf Railroad Company; C. E. Schaff, Receiver of the Missouri, Kansas & Texas Railway Company of Texas; G. H. Schleyer and Avery Turner, Receivers of the Fort Worth & Rio Grande Railway Company, St. Louis, San Francisco & Texas Railway Company; George C. Morris, Receiver of Houston & Brazos Valley Railway Company,—Plaintiffs in the original Bill of Complaint filed herein September 4th, 1916; and Gulf, Texas & Western Railway Company; Southwestern Railway Company; Sugarland Railway Company; San Benito & Rio Grande Valley Railway Company; Pecos Valley Southern Railway Company; Snyder & Pacific Railway Company; Marshall & East Texas Railway Company; Weatherford, Mineral Wells & Northwestern Railway Company; Abilene & Southern Railway Company; Artesian Belt Railroad Company; Bartlett Western Railway Company; Moscow, Camden & San Augustine Railway Company; Quanah, Acme & Pacific Railway Company; Rio Grande & Eagle Pass Railway Company; San Antonio, Fredericksburg & Northern Railway Company; Texarkana, Arkansas & Louisiana Railway Company; Short Line Railway Company; Southeastern Railroad Company; Trinity Valley & Northern Railway Company; Missouri, Oklahoma & Gulf Railway Company; Cairo Northern Railway Company; and Paris & Great Northern Railroad Company,—plaintiffs or petitioners in petition in intervention filed herein on the — day of ——, 191-, and with leave of the Court first had, file this their Second Supplemental Bill of Complaint and Intervention, in the nature of an ancillary bill, and complaining of B. F. Looney, Attorney General of the State of Texas, who is a citizen of said State and who resides in the County of Travis, State of Texas, and who is a defendant in the original Bill of Complaint, and of Luther Nickels, Assistant to the Attorney General of Texas, a citizen of said State who resides in the County of Travis, State of Texas, respect-
4 fully refer to the pleadings of each and all of the parties to this cause, to the briefs filed herein by each and all of the parties to this cause, and to the opinions rendered by the three Circuit Judges of the United States on the hearing at New Orleans for injunction by said plaintiffs and intervening railway companies, and for an injunction by the defendants, the Railroad Commission of Texas, and B. F. Looney, Attorney General, and others, and to the order of said Judges therein made, and to the entire record in this cause, from which it will appear, briefly stated, that said

plaintiffs in said original bill, and said intervening railway companies, after describing and attaching as an exhibit the order of the Interstate Commerce Commission of July 7, 1916, in the cause on the docket of said Commission No. 8418, styled Railroad Commission of Louisiana vs. Aransas Terminal Railway Company, et al., showed that the Texas Lines' Tariff No. 2-B had been filed by them with the Interstate Commerce Commission in pursuance of and under the authority of said order of July 7, 1916, and from which it will appear that there was also shown to the Court the order in said cause No. 8418 of the Interstate Commerce Commission dated January 26, 1917, in which the said Commission granted a rehearing, but provided that pending the rehearing its order of July 7, 1916, should remain in full force and effect, and refused to disturb the said Texas Lines' Tariff No. 2-B in any particular, but the said Commission, by its order made in October, 1916, had suspended only the rates named in said tariff on lignite, cord-wood, tanbark and live-stock, but that with those exceptions the said Interstate Commerce Commission had permitted the said Tariff to continue in full force and effect, and from which it appears (See Supplemental Bill of Complaint, page 4) that the defendant B. F. Looney, purporting to appear for the State of Texas, and as Attorney General of the State of Texas, and others, had petitioned the Interstate Commerce Commission for a rehearing and to set aside its order of July 7, 1916, and suspend said Tariff 2-B, alleging, among other things, that said Tariff 2-B was not in conformity with or authorized by the said order of July 7, 1916, which petitions, as aforesaid, were disposed of by the Interstate Commerce Commission by its said order dated January 26, 1917; and as supplementary thereto plaintiffs herein allege that a rehearing of said cause No. 8418 on the docket of the said Interstate Commerce Commission was had before two of the Examiners of said Commission, beginning at Dallas, Texas, on the 30th day of April, 1917, and ending at San Antonio, Texas, on the 2nd day of June, 1917, and lasting for the full period of five weeks, at which all parties interested were afforded full opportunity to offer evidence and at which Luther Nickels, Assistant Attorney General, representing the State of Texas, the Railroad Commission of Texas, and the Attorney General of Texas, appeared and was in constant attendance, and although he and others protested that the Interstate Commerce Commission was without jurisdiction, he and others offered elaborate evidence concerning all questions involved, particularly concerning rates applicable between points in common point territory of Texas, as defined by said order of the Interstate Commerce Commission of July 7, 1916, and points in differential territory of Texas, as defined in said order, and between points in differential territory, and upon all matters of differential rates referred to by the Interstate Commerce Commission in its report or order of July 7, 1916. Herein these plaintiffs show that at the hearing before the Suspension Board of the Interstate Commerce Commission in October, 1916, such differential rates and rates applicable in differential territory, and between the same and common

point territory were presented for consideration, and it was claimed at such hearing that Texas Lines' Tariff 2-B was, in a number of respects, not in compliance with or authorized by the order of said Interstate Commerce Commission of July 7, 1916; and herein these plaintiffs show that the defendant B. F. Looney, as the Attorney General of Texas, on behalf of himself and the State of Texas, prior to the hearing before said Suspension Board in October, 1916, filed with the Interstate Commerce Commission in said Cause, Docket Number 8418, a petition or brief styled "Complainants' Petition for Suspension and Hearing," in which the differential rate system as prescribed in the order of July 7, 1916, and as found in
6 said Texas Lines' Tariff 2-P was discussed, particularly beginning at page 16 thereof, paragraph 13, and again beginning at page 18 thereof, paragraph 16, a copy of which petition for suspension and hearing is filed herewith, marked "Exhibit A," and referred to only for the purposes herein stated.

That the contention was made at the hearing before the Circuit Judges at New Orleans, that Texas Lines' Tariff 2-B, and the Supplements thereto, were not, in many respects, authorized in so far as the rates prescribed between points in Texas were involved by said order of July 7, 1916, of the Interstate Commerce Commission, is apparent from the First Amended Answer of the Railroad Commission of Texas, the Attorney General of Texas, and others, to which these plaintiffs refer, particularly to pages 49 to 53 thereof.

That all issues involved with respect to whether the said order of the Interstate Commerce Commission of July 7, 1916, was valid or void, and whether the Texas Lines' Tariff No. 2-B and the Supplements thereto pertaining to rates prescribed therein between points in the State of Texas, were authorized by the said order of the Interstate Commerce Commission and the Federal and State laws pertaining thereto, was fully presented in the hearing before the Circuit Judges at New Orleans, is apparent from the following extract from page 1 of the Brief on Facts, etc., filed by defendants Railroad Commission of Texas, B. F. Looney, Attorney General, and others, in New Orleans April 9, 1917:

"If it be thought that the granting of affirmative relief, of any kind, is necessary at this time we submit that the real status quo would and should be preserved by denying plaintiffs' application for a temporary injunction and by granting the prayers of these defendants and of certain intervenors suspending the operation—in whole or in part—of the order of the Interstate Commerce Commission pending either the trial of the cause upon its merits or pending the final action of the Interstate Commerce Commission upon the application for rehearing, or for such other time as the court may deem proper, and, if thought necessary, suspending also Texas Lines' (Fonda) Tariff 2-B. All necessary parties are before the court; the pleadings present the issues and prayers; that the court has full power to grant this relief is evident from the provisions of the Act to Regulate Commerce."

7 It appears from the opinions and order of the Circuit Judges that the application of said defendants Railroad Com-

mission of Texas and B. F. Looney for an order suspending in whole or in part the order of the Interstate Commerce Commission or Texas Lines' Tariff 2-B was denied by the Circuit Judges, and it is apparent from such denial, from the above quoted extract from the Brief on the Facts by the said Railroad Commission of Texas, et al., and the opinions of Circuit Judges Pardee and Batts, read in connection with the order made, granting the injunction as prayed for by the plaintiffs and intervening railway companies, that it was the intent and purpose of said opinions and of said order to preserve the status quo and to protect the said plaintiffs and intervening railway companies in charging the rates prescribed in said Texas Lines' Tariff No. 2-B, and the Supplements thereto, between points in the State of Texas, until the disposition of the rehearing by the Interstate Commerce Commission or until a final trial of this case or until the further order of such Judges.

Herein these plaintiffs show that the time fixed by agreement of the parties for filing briefs in said rehearing before the Interstate Commerce Commission will expire on October 1, 1917, and it is expected that shortly thereafter oral argument will be had on such rehearing and upon the submission thereof the same will be disposed of by the Interstate Commerce Commission with due and reasonable dispatch. Notwithstanding the premises, the defendants B. F. Looney and Luther Nickels filed in the name of the State of Texas, on the 20th day of July, 1917, a purported suit in the District Court of Travis County, 53rd Judicial District, numbered 34832, before the Honorable George Calhoun, Judge,—being in the same court and before the same judge wherein the injunction was granted in the case of the State of Texas vs. Abilene & Southern Railway Company, et al., referred to and described in the petition in intervention herein of the Gulf, Texas & Western Railway Company et al., hereinbefore mentioned, a copy of the petition in which case, No. 32832, and of the exhibits attached thereto are hereto attached.

That in said petition the defendants Looney and Nickels
8 have not disclosed the source from which the rates named in said exhibits were obtained nor the order or authority by or under which such rates were named or prescribed, nor the source from which the limit of 351 miles mentioned in said petition was obtained. In these respects the said petition is general, vague and indefinite, and pertains to the mystic. That these complainants can only divine the meaning of said petition by reading the same in connection with the report and order of the Interstate Commerce Commission of July 7, 1916, when it appears that the rates in said petition or the exhibits thereto were copied from the rates prescribed by the Interstate Commerce Commission in said report and order of July 7, 1916; and it appears to be the theory of said petition that upon all shipments moving less than 351 miles between points in differential territory, as described in said petition, and between points in common point territory and points in such differential territory and between points in such differential territory and points on the differential line cannot exceed the rates prescribed in said report and

order of the Interstate Commerce Commission for such distances upon shipments moving within common point territory, and that with respect to such shipments or movements the defendants are not authorized by the order of the Interstate Commerce Commission to add the additional or differential rate for the portion of the distance which the shipment may move in such differential territory. Wherefore, these plaintiffs allege that it is the purpose of said suit and of the injunction therein prayed for by the said defendants Looney and Nickels to restrain or attempt to restrain or enjoin these plaintiffs from charging the rates prescribed in said Texas Lines' Tariff No. 2-B, in all the movements described in said petition and particularly in paragraphs 2, 3, 4 and 5 thereof. That if such contention as made in such suit was not specifically presented to the Interstate Commerce Commission for its consideration or to the Circuit Judges of the United States for their consideration, that the same was involved in the general averments made by the defendant B. F. Looney before the Interstate Commerce Commission and in this case, that the said Texas Lines' Tariff No. 2-B was in many respects not warranted or authorized by the order of the Interstate Commerce Commis-
9 sion of July 7, 1916, particularly with respect to rates chargeable between points in the State of Texas.

With respect to the contentions of the defendants Looney and Nickels in said case in the State court, these plaintiffs show as follows:

In their interpretation of the order of the Interstate Commerce Commission, Docket No. 8418, the Texas carriers used the Opinion or Report of the Commission in connection with the order, which is warranted by the language of the third paragraph on page IV of the order, in which it is stated that the Commission has made and filed a report containing its findings of fact and conclusions thereon, which said report is made a part of the order.

It was first necessary to determine what the order authorized and required in making the rates between Shreveport on the one hand, and points in the so-called Differential Territory of Texas on the other. On pages 109 and 110 of the opinion, the Commission discusses "Differentials," and in that section of the opinion it describes the so-called Common Point Territory and the Differential Territory, fixing the boundary line between these two territories. (See "Conclusions," page 107.)

Having prescribed just and reasonable class rates between Shreveport and Texas Common Point Territory, as shown on pages 108 and 109 (hereinafter called the standard scale) the Commission states in the last paragraph on page 110:

"We are of the opinion, and find that defendants' present class rates between Shreveport and points in Texas, west of the present Western boundary of Texas Interstate Common Point Territory are, and for the future will be, unjust and unreasonable to the extent that such rates exceed those named as maxima in the above prescribed mileage scale (top of page 109), corresponding to hauls in Differential Territory."

Then follows the scale of differential rates, which may be added to the Standard scale of rates appearing at top of page 109, for the distance shipments traverse in Differential Territory.

From this provision of the opinion it was found that the following is the required formula for making rates between Shreveport on the one hand and points in Differential Territory on the other:

10 First. Find the rate for the distance from Shreveport and the point in Differential Territory by use of the standard scale of rates.

Second. Find the distance in Differential Ter-itory traversed by the shipment, which is the distance from the Differential Boundary Line to the point in Differential Territory.

Third. Find the differential as prescribed for such distance in the table appearing on page 111.

Fourth. Add the differential thus found to the rate determined under the Standard Scale and the sum of the rates thus made is the rate authorized and required by the order, between Shreveport on the one hand and the point in Differential Territory on the other.

The carriers have applied the "just and reasonable" rates prescribed in the opinion and order to the transportation of traffic between Shreveport and points in Differential Territory. In Section X, on page XIV of the order the carriers are required to—

"Maintain and apply to the transportation of property between Shreveport, La., and points in the State of Texas, class rates (and rates on Commodities which are enumerated) not in excess of those contemporaneously applied by them for the transportation of like property for like distances between points in the State of Texas * * *."

It thus became necessary for the carriers to apply to the movement of property between points entirely within the State of Texas, having origin or destination at points in Differential Territory, the identical scales of rates which they applied between Shreveport and such points in Texas Differential Territory.

The practical application of the class rates thus authorized and required by the opinion and order of the Interstate Commerce Commission may be concretely stated as follows: There is provided at top of page 109, a scale of rates to be applied on all shipments for the distances given, regardless of point of origin or destination, but it was also provided that if any shipment moves to or from a point in the described Differential Territory, the rates so made shall be increased by the amounts prescribed in the table of differentials at the top of page 111, and that these differentials are to be applied on all

11 shipments which traverse Differential Territory, "corresponding to the hauls in Differential Territory." This applies alike to shipments moving between Shreveport on the one hand, and points in Differential Territory on the other, and to shipments moving between Texas points, the origin or destination of which is at point in Differential Territory.

Coming now to a consideration of the application of rates under the order on shipments moving entirely within Differential Terri-

tory. The underlying principle established by the opinion and order, is that the rates applying for given distances in Texas, shall be no less than the rates applying for corresponding hauls between Shreveport and Texas. Therefore, on a shipment moving between two points within Differential Territory, the rate for a given distance, must be the same as that prescribed in the opinion and order for application for a corresponding distance between Shreveport and Texas. The rates so made between points in Differential Territory, are, however, qualified by the requirement of the order, that on shipments moving between Shreveport and Differential Territory the standard scale of rates shall be increased by prescribed differentials "corresponding to the hauls in Differential Territory." Therefore, in order to comply with the terms of the opinion and order, an amount must be added to the Standard rates between two points in Differential Territory equal to that prescribed in the differential scale for the distance in Differential Territory traversed by the shipment; in such case, the distance traversed in Differential Territory corresponding to the total distance traversed by the shipment. Thus the shipment moving entirely in Differential Territory is charged in addition to the standard scale, exactly the same amount that a like shipment moving to or from Shreveport would be charged if it moved the same distance in Differential Territory.

The essential thing in the consideration and application of the so-called differentials, is to apply to each shipment, no matter what its origin or destination may be, the differential corresponding to
12 the distance traversed by the shipment in Differential Territory, this application of the differential leaving out of consideration everything, except the distance actually traversed by the shipment in Differential Territory.

Possibly the most remote application of this theory is found in the case of a shipment moving from El Paso to a point, say 100 miles distant. In all of the attacks which have been made upon the differential application provided in Texas Lines' Tariff No. 2-B, and again in the petition of the State in this case, it is pointed out that a shipment moving 100 miles from Shreveport would not encounter Differential Territory, and therefore would not pay a differential rate. The theory of the opinion and order, however, as understood by the carriers, is that the shipment moving from El Paso 100 miles must first pay the standard rate prescribed in scale on page 100, and in addition must pay the scale of differentials provided on page 111, for the reason that on any shipment moving from Shreveport to a point in Differential Territory, which, like the El Paso shipment traverses 100 miles in Differential Territory, the differential for 100 miles would be added to the rate from Shreveport. Stated otherwise, both shipments pay, first—the standard rate prescribed for the total distance traversed, then in addition each shipment pays the differential for the distance in Differential Territory traversed by it.

Up to this point this statement refers entirely to the class rates, but it is unnecessary to separately discuss the commodity rates, for the reason that in all cases where differentials are prescribed to be

used in making commodity rates to and from points in Differential Territory the same underlying principles govern their application, as in the case of class rates.

To illustrate the application of both class and commodity differentials first class rates are used in the following examples—The destination selected for this illustration is Metz, Texas, on the Texas & Pacific Railway, 31 miles west of Big Spring, which is the boundary of Differential Territory. The distance from Shreveport to Metz is 571 miles. The rate under the standard scale is $1.06, the differential for 31 miles is 9 cents, making the total rate Shreveport to Metz $1.15. The distance from Ft. Worth to Metz is 348 miles, the distance in Differential Territory in that case being 31 miles, just the same as in the case of Shreveport. According to the contention of the State, however, the total distance being less than 350 miles, no differential would be employed, making the rate from Forth Worth to Metz $1.03, by use of the standard scale, the same as if the entire movement had been in Common Point Territory. The distance from Dallas to Metz is 380 miles, and again the distance in Differential Territory is 31 miles, the same as in the case of Shreveport, but according to the contention of the State, the differential to be applied would only be for the distance in excess of 350 miles, or 30 miles, so in the case of Dallas the differential used would be 3 cents, making the total rate $1.09. The distance from Denison, Texas, to Metz is 449 miles, and again the distance in Differential Territory is 31 miles. According to the State's contention the differential to be used in making the rate from Denison to Metz would be for the entire distance in Differential Territory, 31 miles, or 9 cents, making the total rate from Denison $1.15, which is the same as the rate from Shreveport.

These examples illustrate the fact that according to the State's contention all equity would be destroyed as between the four shipping points named, so far as the charge for service in Differential Territory is concerned. Shreveport and Denison would pay a differential of 9 cents. Dallas would pay a differential of 3 cents and Forth Worth would pay no differential. This, according to our interpretation would be in direct violation of the Shreveport Order, because it establishes undue prejudice against Shreveport and in favor of the Texas cities. This illustration it is thought demonstrates that to place upon an equality, without discrimination, the four shipping points mentioned, in forwarding their goods to the town of Metz each must pay—first the standard scale of rates according to distance, and added to that the differential scale for 31 miles in each case.

For comparison with the foregoing there is now of-ered an illustration involving a movement entirely within Differential Territory. The town of Lasca is 84 miles from El Paso; under the standard scale the rate is 50 cents, that also being the rate for 84 miles from Shreveport, from Dallas, or from any other Texas points where entire movement is in common point territory. However, both El Paso and Lasca are in the described Differential Territory, therefore, there must be added to the 50 cent rate the prescribed differential, 9 cents per 100 pounds, for the total distance of 84 miles,

making the total rate 59 cents. With this compare the rate from Denison or Shreveport to Mets, which is 81 miles west of the Differential Territory boundary, or approximately the same distance as El Paso to Lasca. Under the State's contention, the shipment from Denison or Shreveport moving 81 miles in Differential Territory, would pay differential 9 cents per 100 pounds, while the shipment from El Paso to Lasca, moving 84 miles in Differential Territory would pay no differential. Here again, there would be a discrimination against Shreveport, since under the State's contention a shipment from El Paso to Lasca, would pay no differential for a movement of 84 miles in Differential Territory, while a shipment from Shreveport would pay 9 cents for a haul of 81 miles in Differential Territory.

Illustrations of the discriminations resulting under the methods of applying differentials contended for by the State might be multiplied, but the only difference would be in the extent of such discriminations. The following illustrations are offered, showing in tabulated form the rates determined respectively under the method of applying differentials employed by the carriers and that contended for by the State:

Distance.	From—	As applied by carriers. Standard scale.	Differential.	Total.	State contends should be— Standard scale.	Differential.	Total.
To Plateau, Tex. on T. & P. Ry. (202 miles to west of the differential line at Big Spring):							
474	Ft. Worth, Texas	106	25	131	106	13	119
505	Dallas, Texas	106	25	131	106	16	122
574 718 696	Denison, Texas Texarkana, Texas Shreveport, La.	106	25	131	106	25	131
To Sierra Blanca, Tex., on T. & P. Ry. (286 miles west of differential line):							
523	Fort Worth, Texas	106	30	136	106	18	124
555	Dallas, Texas	106	30	136	106	25	131
624 767 745	Denison, Texas Texarkana, Texas Shreveport, La.	106	30	136	106	30	136

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While in these illustrations the distances from the different points to a given destination differ considerably that is neither the reason for, nor a justification of, the difference in the rates. Under the Standard scale applying in Common Point Territory the rate is the same for any distance over 350 miles. For example, the rate from Corsicana to Corpus Christi 357 miles, is the same as from Quanah to Corpus Christi, 591 miles. This same situation previously existed to a greater extent under the class tariffs of the Railroad Commission of Texas, under which, for example, rates were exactly the same from Amarillo to Laredo, 745 miles, as from Taylor to Laredo, 267 miles, no increased rate being allowed for the additional distance of 478 miles.

The differences in rates shown in illustrations above, except in cases where the total distance is less than 351 miles, arise entirely under the method contended for by the State from the addition of different differentials for exactly the same service in Differential Territory.

16 That exclusive jurisdiction is vested in the Interstate Commerce Commission in the first instance to determine whether the rates complained of in said suit in the State court are in accordance with or authorized by its order, and if there be any uncertainty or ambiguity in the order it is the duty of the party claiming the same to apply to the Interstate Commerce Commission for a supplemental order explaining the same. But the Interstate Commerce Commission has made no ruling, although the said Texas Lines' Tariff No. 2-B has been before it since about October 1, 1916, that the charging of the rates complained of by the defendants herein in their said suit in the State Court was not authorized or required by the order of July 7, 1916. That each and all of the rates in said Texas Lines' Tariff No. 2-B prescribed for application to shipments between points in Texas, some of or a portion of which rates are complained of in the plaintiff's petition in the said case in the State Court, and some of or a portion of which said rates the State Court is therein asked to enjoin these complainants from hereafter charging, are in all respects and in every particular in compliance with and authorized by said order of the Interstate Commerce Commission of July 7, 1916, as well as by its subsequent action in refusing to suspend the same. That the effect of granting the injunction as prayed for in the State Court would be to suspend in part said order of the Interstate Commerce Commission of July 7, 1916.

By virtue of the Statutes of the United States, which confer on the District Courts of the United States exclusive jurisdiction to determine the validity of the orders of the Interstate Commerce Commission, in whole or in part, and which require that suits for that purpose be filed against the United States in the proper district, and which exclusive jurisdiction to determine the validity or invalidity of such orders, in whole or in part, necessarily involves the exclusive jurisdiction to construe and interpret the same, the State District Court of Travis County is wholly without jurisdiction to determine the issues undertaken to be presented to it in said suit.

That further it appears from the record in this case that this
17 court has acquired jurisdiction of the entire subject-matter, both at the instance of the complainant railway companies and of the intervening railway companies and of the defendants, the Railroad Commission of Texas and B. F. Looney, Attorney General; such jurisdiction has been exercised by the granting of the injunction prayed for by the complainants and the intervening railway companies and by denying the relief prayed for by the defendants, the Railroad Commission of Texas and B. F. Looney, Attorney General of Texas; and, wherefore, the State District Court of Travis County is without authority or jurisdiction to act on a part of the controversy involved in this suit, particularly as this suit, being one concerning a general system of rates and the validity of a specific order of the Interstate Commerce Commission and the construction and interpretation thereof, is in the nature of a suit or proceeding in rem in which this court has so acquired jurisdiction of the entire subject-matter.

These plaintiffs further show that the granting of an injunction in the suit in the State court, as prayed for by the defendants Looney and Nickels, would subject them to a multitude and multiplicity of suits by shippers for overcharges and penalties under the statutes of Texas referred to in the Bill of Complaint, for the granting of such injunction would be taken by shippers as evidence that the rates complained of in said suit by the defendants Looney and Nickels, in the name of the State of Texas, were not authorized by the order of the Interstate Commerce Commission; and that plaintiffs and those of them who have been charging the rates complained of in said suit in the State court are not protected by the injunction granted in this Court, whereby these plaintiffs or those of them who have been charging the rates complained of by the Attorney General, would be subject to great harassment, annoyance and expense. That the plaintiffs herein, who
18 were complainants in the original bill, have, since November 1, 1916, on all shipments moving, been charging and now are charging the rates complained of in the said suit in the State court, but that plaintiffs herein, who were the intervening petitioners in said petition in intervention, have been charging such rates only to the extent that they were authorized so to do by orders of the Railroad Commission of Texas for since the granting of the injunction in this case and the decision of the Supreme Court of the United States in the case commonly called the South Dakota Express case they have been awaiting the action of the Court of Civil Appeals of Texas on the motion for a rehearing in the case of the State of Texas vs. Abilene & Southern Railway Company et al., hereinbefore referred to, in which the injunction was granted by the State court against them.

Asherton & Gulf Railway Company, a corporation under the laws of the State of Texas, whose principal office is in the city of Asherton, Texas,

El Paso Southern Railway Company, a corporation under the

laws of the State of Texas, whose principal office is in the city of El Paso, Texas,

The Pecos River Railroad Company, a corporation under the laws of the State of Texas, whose principal office is in the city of Pecos, Texas, and

The Timpson and Henderson Railroad Company, a corporation under the laws of the State of Texas, whose principal office is in the city of Henderson, Texas, have not heretofore been parties to this suit, but are made defendants in the said suit No. 34,832 in the District Court of Travis County, Texas, and they now pray leave to make themselves parties to this case and join in the foregoing supplemental bill with plaintiffs therein, and adopting all of the allegations thereof.

Plaintiffs herein allege that the only other defendants in the said petition in said case No. 34,832 in the State District Court are the Motley County Railway Company and the Rio Grande Railway Company, and herein they allege that the said Motley
10 County Railway Company was not a party to said order of July 7, 1916, of the Interstate Commerce Commission, has not been charging the rates prescribed in said order or in said Texas Lines' Tariff No. 2-B and supplements thereto or the rates complained of by the Attorney General except in so far as said Company was authorized to do so by the orders of the Railroad Commission of Texas; that said Company is in no wise concerned or interested in said suit in the State Court and that the Rio Grande Railway Company, while originally a party to said order of July 7, 1916, was subsequently exempted therefrom and has not been charging the rates complained of in the petition in said suit in the State District Court, except in so far as said railway company was authorized to do by the orders of the Railroad Commission of Texas and said Company is in no wise interested in the said suit in the State Court.

Plaintiffs herein aver that the said suit, Docket No. 34,832 in the State District Court was set for hearing on the application of the plaintiff therein for an injunction as therein prayed for at ten o'clock A. M. Monday the 6th day of August, 1917; unless the relief herein prayed for is granted, said application will then in all probability be heard and said injunction will be granted as prayed for, and thereby these plaintiffs will be immediately harassed, annoyed and put to great expense and immediately subjected to the great burden of innumerable suits for penalties and overcharges to shippers.

That the relief herein prayed for should be granted, because the State Court is without jurisdiction of the subject matter and because it is necessary to protect the jurisdiction of this Court already acquired over the subject matter, and in order to afford these plaintiffs full and complete relief, contemplated and intended by the opinions of such Circuit Judges and order made by them granting the injunction herein.

Wherefore, these plaintiffs pray that a restraining order be at once granted restraining the said defendants Looney and Nichols

their associates and all other persons from prosecuting said suit No. 34,832 in the said District Court of Travis County, Texas, from instituting or prosecuting any similar suit in said Court or any other Court other than the United States District Court for the Western District of Texas, and from in any way or manner whatsoever attempting to interfere or prevent these plaintiffs from charging the rates prescribed in said Texas Lines' Tariff 2-B and supplements thereto, and that upon hearing hereof an injunction be granted restraining the said defendants and all other persons as prayed for above and that on final hearing, such injunction be made perpetual and for all other and further relief as may be proper in the premises.

(Signed) J. W. TERRY,
H. M. GARWOOD,
V. L. BROOKS,
A. WINSLOW,
A. H. McKNIGHT,
R. C. FULLBRIGHT,
HIRAM GLASS,
Attorneys for Plaintiffs.

THE STATE OF TEXAS,
County of Travis:

Hiram Glass, being duly sworn, deposes and says that he is one of the Attorneys for the plaintiffs in the above entitled second supplemental bill, has read the same and knows the contents thereof and is cognizant of the matters and allegations therein stated and made, and the same are true.

(Signed) HIRAM GLASS.

Sworn to and subscribed before me this the 3rd day of August, A. D. 1917.

(Signed) A. K. BLACK,
[SEAL.] *Notary Public, Travis County, Texas.*

21 THE STATE OF TEXAS,
County of Travis:

In the District Court of Travis County, Texas, Fifty-third Judicial District.

To the Honorable George Calhoun, Judge of said Court:

Comes now the State of Texas, hereinafter styled Plaintiff, acting herein by and through B. F. Looney, Attorney General of Texas, complaining of each and all of the railway companies and receivers named in the next succeeding paragraph, hereinafter called Defendants, and for cause of action says:

L

That each and all of the railway companies and receivers next named herein now own and operate a line or lines of railway within this State, each of which railway companies except the Texas & Pacific is organized under the laws of the State of Texas, and thereover are now engaged, and have for many years last past been engaged, in carrying articles of commerce over said lines as common carriers, to-wit:

Abilene and Southern Railway Co., whose principal office is in the city of Abilene, Taylor County, Texas, where it has an agent upon whom service herein may be had;

Artesian Belt Railroad, whose principal office is in the city of San Antonio, Bexar County, Texas, where it has an agent upon whom service herein may be had;

Asherton and Gulf Railway Co., whose principal office is in the city of Asherton, La Salle County, Texas, where it has an agent upon whom service herein may be had;

Angelina and Neches River Railroad, whose principal office is in the city of Keltys, Angelina County, Texas, where it has an agent upon whom service herein may be had;

Bartlett Western Railway, whose principal office is in the city of Bartlett, Williamson County, Texas, where it has an agent upon whom service herein may be had;

The Beaumont, Sour Lake and Western Railway Co., whose principal office is in the city of Houston, Harris County, Texas, where it has an agent upon whom service herein may be had;

Caro Northern Railway Co., whose principal office is in the city of Caro, Nacogdoches County, Texas, where it has an agent upon whom service herein may be had;

The Chicago, Rock Island and Gulf Railway Co., whose principal office is in the city of Fort Worth, Tarrant County, Texas, where it has an agent upon whom service herein may be had;

Eastern Texas Railroad Co., whose principal office is in the city of Lufkin, Angelina County, Texas, where it has an agent upon whom service herein may be had;

El Paso and Northeastern Railroad Co., whose principal office is in the city of El Paso, El Paso County, Texas, where it has an agent upon whom service herein may be had;

El Paso and Southwestern Railroad Co. of Texas, whose principal office is in the city of El Paso, El Paso County, Texas, where it has an agent upon whom servvice herein may be had;

El Paso Southern Railway Co., whose principal office is in the city of El Paso, El Paso County, Texas, where it has an agent upon whom service herein may be had;

Fort Worth and Denver City Railway Co., whose principal office is in the city of Fort Worth, Tarrant County, Texas, where it has an agent upon whom service herein may be had;

Fort Worth and Rio Grande Railway Co., whose principal office

is in the city of Fort Worth, Tarrant County, Texas, where it has an agent upon whom service herein may be had;

The Galveston, Harrisburg and San Antonio Railway Co., whose principal office is in the city of Houston, Harris County, Texas, where it has an agent upon whom service herein may be had;

22 Galveston, Houston and Henderson Railway Co., whose principal office is in the city of Galveston, Galveston County, Texas, where it has an agent upon whom service herein may be had;

Groveton, Lufkin and Northern Railway Co., whose principal office is in the city of Groveton, Trinity County, Texas, where it has an agent upon whom service herein may be had;

Gulf, Colorado and Santa Fe Railway Co., whose principal office is in the city of Galveston, Galveston County, Texas, where it has an agent upon whom service herein may be had;

Gulf, Texas and Western Railway Co., whose principal office is in the city of Jermyn, Jack County, Texas, where it has an agent upon whom service herein may be had;

Houston and Brazos Valley Railway Co., whose principal office is in the city of Freeport, Brazoria County, Texas, where it has an agent upon whom service herein may be had;

The Houston East and West Texas Railway Co., whose principal office is in the city of Houston, Harris County, Texas, where it has an agent upon whom service herein may be had;

Houston and Texas Central Railroad Co., whose principal office is in the city of Houston, Harris County, Texas, where it has an agent upon whom service herein may be had;

International and Great Northern Railway Company and James A. Baker, Receiver thereof, whose principal offices are in the city of Houston, Harris County, Texas, where they each have agents upon whom service herein may be had;

Jefferson and Northwestern Railway Co., whose principal office is in the city of Jefferson, Marion County, Texas, where it has an agent upon whom service herein may be had;

Kansas City, Mexico and Orient Railway Company of Texas, whose principal office is in the city of San Angelo, Tom Green County, Texas, where it has an agent upon whom service herein may be had;

Marshall and East Texas Railway Company and Bryan Snyder, Receiver thereof, whose principal offices are in the city of Marshall, Harrison County, Texas, where they each have agents upon whom service herein may be had;

The Missouri, Kansas and Texas Railway Company of Texas and C. E. Schaff, Receiver thereof, whose principal offices are in the city of Dallas, Dallas County, Texas, where they each have agents upon whom service herein may be had;

Moscow, Camden and San Augustine Railway Co., whose principal office is in the city of Camden, Polk County, Texas, where it has an agent upon whom service herein may be had;

Missouri, Oklahoma and Gulf Railway Company of Texas, whose principal office is in the city of Denison, Grayson County, Texas, where it has an agent upon whom service herein may be had;

Motley County Railway Co., whose principal office is in the city of Matador, Motley County, Texas, where it has an agent upon whom service herein may be had;

The Nacogdoches and Southeastern Railroad, whose principal office is in the city of Nacogdoches, Nacogdoches County, Texas, where it has an agent upon whom service herein may be had;

The Orange and Northwestern Railroad Co., whose principal office is in the city of Houston, Harris County, Texas, where it has an agent upon whom service herein may be had;

Panhandle and Santa Fe Railway Co., whose principal office is in the city of Amarillo, Potter County, Texas, where it has an agent upon whom service herein may be had;

Paris and Great Northern Railroad Co., whose principal office is in the city of Paris, Lamar County, Texas, where it has an agent upon whom service herein may be had;

23 Paris and Mt. Pleasant Railroad Co., whose principal office is in the city of Paris, Lamar County, Texas, where it has an agent upon whom service herein may be had;

The Pecos River Railroad Co., whose principal office is in the city of Pecos, Reeves County, Texas, where it has an agent upon whom service herein may be had;

The Pecos Valley Southern Railway, whose principal office is in the city of Pecos, Reeves County, Texas, where it has an agent upon whom service herein may be had;

Quanah, Acme and Pacific Railway Co., whose principal office is in the city of Quanah, Hardeman County, Texas, where it has an agent upon whom service herein may be had;

Rio Grande Railway Co., whose principal office is in the city of Brownsville, Cameron County, Texas, where it has an agent upon whom service herein may be had;

Rio Grande and Eagle Pass Railway Co., whose principal office is in the city of Laredo, Webb County, Texas, where it has an agent upon whom service herein may be had;

Rio Grande, El Paso and Santa Fe Railroad Co., whose principal office is in the city of El Paso, El Paso County, Texas, where it has an agent upon whom service herein may be had;

Roscoe, Snyder and Pacific Railway Co., whose principal office is in the city of Roscoe, Nolan County, Texas, where it has an agent upon whom service herein may be had;

The St. Louis, Brownsville and Mexico Railway Co., whose principal office is in the city of Kingsville, Kleberg County, Texas, where it has an agent upon whom service herein may be had;

St. Louis, San Francisco and Texas Railway, whose principal office is in the city of Fort Worth, Tarrant County, Texas, where it has an agent upon whom service herein may be had;

St. Louis Southwestern Railway Company of Texas, whose principal office is in the city of Tyler, Smith County, Texas, where it has an agent upon whom service herein may be had;

San Antonio and Aransas Pass Railway Co., whose principal office is in the city of San Antonio, Bexar County, Texas, where it has an agent upon whom service herein may be had;

The San Antonio, Fredericksburg and Northern Railway Company and M. H. Trice, Receiver thereof, whose principal offices are in the city of Fredericksburg, Gillespie County, Texas, where they each have agents upon whom service herein may be had;

San Antonio, Uvalde and Gulf Railroad Company and A. R. Ponder, Receiver thereof, whose principal offices are in the city of San Antonio, Bexar County, Texas, where they each have agents upon whom service herein may be had;

San Benito and Rio Grande Valley Railway Co., whose principal office is in the city of San Benito, Cameron County, Texas, where it has an agent upon whom service herein may be had;

Shreveport, Houston and Gulf Railroad Co., whose principal office is in the city of Manning, Angelina County, Texas, where it has an agent upon whom service herein may be had;

Southwestern Railway Co., whose principal office is in the city of Henrietta, Clay County, Texas, where it has an agent upon whom service herein may be had;

Sugar Land Railway Co., whose principal office is in the city of Sugar Land, Fort Bend County, Texas, where it has an agent upon whom service herein may be had;

Texarkana and Fort Smith Railway Co., whose principal office is in the city of Texarkana, Bowie County, Texas, where it has an agent upon whom service herein may be had;

Texas, Arkansas and Louisiana Railway, whose principal office is in the city of Atlanta, Cass County, Texas, where it has an agent upon whom service herein may be had;

24 Texas and New Orleans Railroad Co., whose principal office is in the city of Houston, Harris County, Texas, where it has an agent upon whom service herein may be had;

The Texas and Pacific Railway Co., whose principal office is in the city of Dallas, Dallas County, Texas, where it has an agent upon whom service herein may be had, and Pearl Wight and J. L. Lancaster, Receivers thereof, whose principal offices are in the city of Dallas, Dallas County, Texas, where they have agents upon whom service herein may be had;

Texas Mexican Railway Co., whose principal office is in the city of Laredo, Webb County, Texas, where it has an agent upon whom service herein may be had;

Texas Midland Railroad, whose principal office is in the city of Terrell, Kaufman County, Texas, where it has an agent upon whom service herein may be had;

Texas Short Line Railway Co., whose principal office is in the city of Grand Saline, Van Zandt County, Texas, where it has an agent upon whom service herein may be had;

Texas Southeastern Railroad Co., whose principal office is in the city of Diboll, Angelina County, Texas, where it has an agent upon whom service herein may be had;

The Timpson and Henderson Railway Co., whose principal office is in the city of Henderson, Rusk County, Texas, where it has an agent upon whom service herein may be had;

The Trinity and Brazos Valley Railway Company and J. W.

Robbins, Receiver thereof, whose principal offices are in the c
of Houston, Harris County, Texas, where they each have agen
upon whom service herein may be had;

Trinity Valley and Northern Railway Co., whose principal offi
is in the city of Dayton, Liberty County, Texas, where it has
agent upon whom service herein may be had;

Trinity Valley Southern Railroad Co., whose principal office
in the city of Oakhurst, San Jacinto County, Texas, where it h
an agent upon whom service herein may be had;

The Weatherford, Mineral Wells and Northwestern Railway Co
pany, whose principal office is in the city of Weatherford, Park
County, Texas, where it has an agent upon whom service here
may be had; and

The Wichita Valley Railway Company, whose principal offi
is in the city of Wichita Falls, Wichita County, Texas, where
has an agent upon whom service herein may be had.

II.

That prior to November 1, 1916, each and all of the Defendan
their agents and officers conspired together to violate the laws
the State of Texas in the respects set forth in subsequent portio
of this Petition, and made and entered into an agreement where
each and all of them agreed to demand, charge and collect rates
the transportation of articles moving in intra-state commerce to poi
within the State of Texas in excess of those prescribed and authori
by law therefor, as set out in subsequent portions of this Petiti
and on November 1, 1916, the Defendants, and each of them,
such agreement and conspiracy into execution, and on each and ev
day since said date, pursuant to such agreement and conspira
have demanded, charged and collected for the transportation of
articles in intra-state commerce unlawful rates, as set forth
subsequent portions of this Petition; and have announced th
intention to continue to do so, and will, unless the relief he
prayed is granted, continue to do so in the future to the great
irreparable injury of Plaintiff and the shipping public.

III.

"Inter-state Differential Territory," as that term is used in
Petition, includes all territory and railway stations in the Stat
Texas, west, northwest and southwest of a line drawn through
State, located and described as follows, to-wit:

"From a point where the St. Louis, San Francisco & Texas R
way crosses the Red River just north of Hazel to Acme
25 the Fort Worth & Denver City Railway; thence via an
line east of the Quanah, Acme & Pacific Railway thro
Sagerton on the Wichita Valley Railway to Fullerville on the
handle & Santa Fe Railway; thence west of the Roscoe, Snyde
Pacific Railway to Big Springs on the Texas & Pacific Railw
thence (immediately) east of the Gulf, Colorado & Santa Fe R

way to San Angelo; thence via of an air line through Menard on the Fort Worth & Rio Grande Railway to Llano on the Houston & Texas Central Railway and (immediately) east of the San Antonio, Fredericksburg & Northern and San Antonio & Aransas Pass Railways to San Antonio; thence west and south of San Antonio & Aransas Pass Railway via Skidmore and Sinton to Corpus Christi on the Gulf of Mexico; except stations on the International & Great Northern Railway (from) San Antonio to Devine, inclusive."

And the territory and stations included in such "Differential Territory" will be made to appear more particularly upon hearing hereof.

IV.

Prior to November 1, 1916, certain class and commodity rates had been prescribed under the law, and under the color of the authority of law, to apply to the receipt, transportation and delivery of articles and commodities moving in intra-state transit and commerce within the State of Texas, and the class rates and rates on such commodities charged and to be charged by each and all of the Defendants for the receipt, transportation and delivery of such articles and commodities moving in intra-state transit and commerce between the points and within the territory described in the next succeeding subdivision of this Petition, and so moving for distances less than three hundred and fifty-one (351) miles, could not, and cannot in the future, in any event, lawfully exceed the maxima rates for distances less than three hundred and fifty (350) miles shown in Exhibit No. 1 filed herewith and made a part hereof, and which maxima rates for such commodities are shown in Exhibits Nos. —, filed herewith and made a part hereof. But notwithstanding the premises the Defendants, and each and all of them, jointly and severally, pursuant to an agreement and conspiracy theretofore entered into by them and each and all of them to violate the laws of this State and to inflict great and irreparable injury upon Plaintiff and the shipping public, have continuously and on each and every day since November 1, 1916, have demanded, charged and collected, for the receipt, transportation and delivery by them of such articles and commodities so moving, and to move, rates greatly in excess of those so prescribed as maxima, and, unless the relief herein prayed is granted, they, and each and all of them, jointly and severally, pursuant to such agreement and conspiracy, will continue to demand, charge and collect for the receipt, transportation and delivery of such articles and commodities so moving, and to move, rates greatly in excess of those so prescribed as maxima; and by reason of the premises the Defendants, and each and all of them, have conspired to violate the laws of the State of Texas, and have violated such laws, and threaten to and will continue to violate such laws, unless the relief herein prayed is granted, and thereby have greatly and irreparably injured, and threaten to and will continue greatly and irreparably to injure, Plaintiff and the members of the shipping public in this State, for which injuries Plaintiff has had, and now has, no adequate remedy at law.

V.

The intra-state movements of the articles and commodities upon which the Defendants, as aforesaid, have unlawfully demanded, charged and collected, and upon which they threaten to continue unlawfully to demand, charge and collect, such excessive rates are each and all of the following, amongst others, to-wit:

1. All such movements, for all distances less than 351 miles, between points of origin and destination both within said "Differential Territory."

2. All such movements, for all distances less than 351 miles, having origin within said "Differential Territory" and destination in Texas east of said "Differential Territory."

3. All such movements, for distances of less than 351 miles, having origin within said "Differential Territory" and destination at points on said "Differential Line," as described in Subdivision III of this Petition.

4. All such movements, for distances of less than 351 miles, having origin in Texas east of said "Differential Line" and having destination within said "Differential Territory."

26 VI.

Wherefore, Plaintiff prays that the Defendants, and each of them, be cited in the terms of the law to appear and answer hereunto, and that upon final hearing hereof, Plaintiff have judgment against them and each and all of them, forever enjoining, restraining and prohibiting them, and each of them, and their respective officers, agents and employes from demanding, charging or collecting any rate or rates, for any, and all such movements as are described in the last preceding Subdivision of this Petition, in excess of the rates therefor as prescribed and shown in Exhibits Nos. 1 to—, inclusive, filed herewith.

In the alternative, in the event the Court should not grant the full relief hereinabove prayed, Plaintiff prays that it have such partial relief with respect to any or all of such movements to which it may show itself entitled.

Plaintiff prays for judgment for all costs, and for such other relief general and special, to which it may be entitled.

VII.

Plaintiff says that each day of the continuance of the aforesaid acts of the Defendants, and each of such acts, inflicts upon it, and upon the shipping public, great and irreparable injury for which it has no adequate remedy at law, or otherwise than as herein prayed, and that such acts of the Defendants, and each of them, should be restrained, enjoined and prohibited, pending the final hearing of the cause.

Wherefore, Plaintiff presents this its application for a temporary injunction or restraining order, restraining the Defendants, and each

of them, and their several officers, agents and employes from demanding, charging or collecting any rate or rates for the receipt, transportation and delivery of any or all of such articles or commodities moving, or to move, in intra-state transit in each and all of the movements as described in Subdivision V of this Petition, pending the final hearing hereof, and prays that this Court will immediately enter its order and let its writ of injunction or restraining order issue to such ends.

R. F. LOONEY,
Attorney General;

———— ————,
Assistant Attorney General,
Attorneys for Plaintiff.

THE STATE OF TEXAS,
County of Travis:

I, Luther Nichols, do solemnly swear that the matters of fact set forth in the foregoing Petition are true and correct.

———— ————.

Subscribed and sworn to before me this the — day of July, A. D. 1917.

[SEAL.]

———— ————,
Notary Public, Travis County, Texas.

27

EXHIBIT No. 1.

Class Rates.

Miles.	1	2	3	4	5	A	B	C	D	E
10 and less.....	23	19	16	14	10	10	8	7	6	5
20 and over 10...	27	22	19	16	12	13	10	9	8	6
30 and over 20...	30	25	21	18	14	16	12	10	9	7
40 and over 30...	33	28	23	20	16	17	13	11	10	8
50 and over 40...	37	31	26	22	18	19	15	13	11	9
60 and over 50...	40	34	28	24	20	21	16	14	12	10
70 and over 60...	43	37	30	26	21	22	17	15	13	11
80 and over 70...	47	40	33	28	23	24	19	16	14	12
90 and over 80...	50	43	35	30	25	26	20	18	15	12
100 and over 90...	53	45	37	32	27	28	21	19	16	13
110 and over 100..	57	48	40	34	29	30	23	20	17	14
120 and over 110..	60	51	42	36	30	31	24	21	18	15
130 and over 120..	63	54	44	38	31	33	25	22	19	16
140 and over 130..	67	57	47	40	33	35	27	23	20	17
150 and over 140..	70	60	49	42	35	36	28	25	21	18
175 and over 150..	75	64	53	45	38	39	30	26	22	19
200 and over 175..	80	68	56	48	40	42	32	28	24	20
225 and over 200..	85	72	59	51	43	44	34	30	26	21
250 and over 225..	90	77	63	54	45	47	36	32	27	23
300 and over 250..	100	85	70	60	50	52	40	35	30	25
350 and over 300..	108	87	72	62	52	54	41	36	31	26

Exhibit No. 2.

Commodities.

(1) Stone (rough): Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, 33-1/3 per cent of Class E rates up to and including 350 miles but not to exceed 5 mills per ton per mile for distances greater than 350 miles; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(2) Sand and gravel: Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, at least 10 cents per ton less than corresponding rates on rough stone up to and including 350 miles, but not to exceed 4½ mills per ton per mile for distances greater than 350 miles; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(3) Common brick: Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, 40 per cent of Class E rates up to and including 300 miles, with addition of 5 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 17 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(4) Fire brick: Carload minimum, 40,000 pounds.

Rates, for single-line application, 40 per cent of Class D rates up to and including 300 miles, with addition of 5 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 20 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 1 cent per 100 pounds.

(5) Junk: Carload minimum, 30,000 pounds.

Rates, for single-line application, 40 per cent of Class B rates up to but not exceeding 400 miles, with addition of 4 mills per 100 pounds for each 25 miles in excess of 400 miles, until a maximum rate of 20 cents per 100 pounds is reached; for joint line application, may exceed those here named for single line application by 2 cents per 100 pounds, subject to the same maximum of 20 cents per 100 pounds.

(6) Lignite: Carload minimum, 40,000 pounds.

Rates, for single-line application, 25 per cent of C[illegible] rates up to but not exceeding 300 miles, with addition of 4 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 15 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(7) Cordwood and tan bark: Carload minimum.

Length of car in feet.	Pounds.
30 and less	28,000
Over 30 and not over 32	31,500
Over 32 and not over 34	35,000
Over 34	42,000

Rates, for single-line application, 30 per cent of Class E rates up to and including 300 miles, with addition of 4 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 15 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(8) Machinery (gin and irrigation): Carload minimum, 24,000 pounds.

Rates, to or from Interstate Common point territory in Texas for single-line application, Class A rates, subject to a maximum of 45 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 4 cents per 100 pounds, subject to the same maximum.

(9) Glass fruit jars and bottles: Carload minimum, 30,000 pounds.

Rates, to or from points in said common point territory for single-line application, 50 per cent of Fifth Class rates; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds.

(10) Iron and steel articles: Carload minimum, 30,000 pounds.

Rates, to or from points in said common point territory for single-line application, 60 per cent of Fifth Class rates, subject to a maximum of 32 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum.

(11) Potatoes and turnips: Carload minimum, 30,000 pounds.

Rates, to or from points in said common point territory for single-line application, 85 per cent of Class C rates, subject to a maximum of 25 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum.

(12) Fruits, melons, and vegetables: Carload minimum, 24,000 pounds.

Rates, to and from points in said common point territory for single-line application, Class C rates up to and including 80 miles, or, where the haul exceeds 80 miles, 2 cents per 100 pounds higher than the rates above prescribed on potatoes and turnips, subject to a maximum of 27 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum.

(13) Empty barrels and kegs: Carload minima.

Length of car, in feet.	Tight barrels and kegs.	Slack barrels and kegs.
36 and less	11,200	10,000
40 and over 36	14,000	11,000
45 and over 40	16,100	12,000
50 and over 45	18,500	14,000

Rates for Single-line Application.

Distance in miles.	Rate in cents.	Distance in miles.	Rate in cents.
10 and less	5	130 and over 120	13½
20 and over 10	6	140 and over 130	13½
30 and over 20	7	150 and over 140	14
40 and over 30	8	200 and over 150	15
50 and over 40	9	250 and over 200	16
60 and over 50	10	300 and over 250	17
70 and over 60	11	350 and over 300	18
80 and over 70	11½	400 and over 350	19
90 and over 80	12	500 and over 400	21
100 and over 90	12½	600 and over 500	23
110 and over 100	12½	700 and over 600	25
120 and over 110	13	Over 700	25

Rates for joint line application may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum of 25 cents.

29 (14) Blackstrap molasses: Carload minima, 36,000 pounds.

Rates to or from Points in Said Common Point Territory for Single-line Application.

Distance in miles.	Rate in cents.	Distance in miles.	Rate in cents.
10 and less	4	120 and over 110	12
20 and over 10	5	130 and over 120	12½
30 and over 20	6	140 and over 130	13
40 and over 30	7	150 and over 140	13
50 and over 40	8	160 and over 150	13½
60 and over 50	9	200 and over 160	14½
70 and over 60	10	250 and over 200	15½
80 and over 70	10	300 and over 250	16½
90 and over 80	11	350 and over 300	17½
100 and over 90	11	400 and over 350	18½
110 and over 100	12	Over 400	19

Rates for joint line application may exceed those here named for single-line application by 1 cent per 100 pounds, subject to the same maximum of 19 cents per 100 pounds.

(15) Cotton seed and products: Carload minima.

Cotton seed, straight carloads, 30,000 pounds; cottonseed cake and meal, straight or mixed carloads, 36,000 pounds; cottonseed hulls and articles taking same rates, straight carloads, 30,000 pounds; cottonseed oil, tank bottoms, in wood, straight or mixed carloads, 20,000 pounds; in tank cars, straight carloads, subject to an estimated weight of 7½ pounds per gallon, 47,000 pounds, unless the shell capacity of the tank is less, in which case the shell capacity shall govern.

Rates to or from Points in Said Common Point Territory for Single-line Application.

Distance in miles.	Cottonseed, cottonseed cake and meal.	Cottonseed hulls and bran, rice bran and rice hulls.	Cottonseed oil and tank bottoms.
10 and less	5	4½	9
20 and over 10	6	4½	9
30 and over 20	6½	5	10
40 and over 30	7	5	11
50 and over 40	7½	5	12
60 and over 50	8	5½	13
70 and over 60	8½	6	13½
80 and over 70	9	6½	14
90 and over 80	9½	7	14½
100 and over 90	10	7½	15
120 and over 100	11	8	16
140 and over 120	12	8½	17
160 and over 140	13	9	18
180 and over 160	14	9½	19
200 and over 180	15	10	20
240 and over 200	16½	11	22
280 and over 240	17½	11½	23½
300 and over 280	18	12	24
320 and over 300	19	12½	24½
340 and over 320	20	13	25
360 and over 340	21	13	25
Over 360	21	13	25

Rates for joint line application may exceed those here named for single-line application by 1½ cents per 100 pounds, subject to the same maxima.

On mixed carloads of cottonseed hulls and cottonseed cake and meal the highest rate applicable on any commodity included in the shipment shall apply, subject to a minimum weight of 36,000 pounds.

(16) Unshelled peanuts, flour, wheat, corn, hay, and articles taking the same rates respectively: Carload minima,

On corn and articles taking corn rates, except as shown below ..... 36,000 pounds
On ear corn, snapped or in the shuck; also on the following articles in the head:

80 Feterita, Kaffir corn, milo maize, and Egyptian wheat, in straight or mixed carloads:

When loaded to the full visible capacity of cars smaller than 36 feet in length and 8 feet high	24,000 pounds
When loaded in cars 36 feet in length and 8 feet high or larger	30,000 "
On oats, also oats and barley blended	30,000 "
On milo maize, Kaffir corn, and feterita	36,000 "
On wheat and articles taking wheat rates, except as shown below	36,000 "
On grain products	30,000 "
On peanuts	30,000 "
On seeds	30,000 "
On hay and articles taking hay rates:	
Cars 32 feet and less in length, internal measurement	14,000 "
Cars 34 feet and over 32 feet in length	15,000 "
Cars 36 feet and over 34 feet in length	16,000 "
Cars over 36 feet in length	17,000 "

Rates to or from Points in said Common Point Territory for Single-line Application.

Distance in miles.	Unshelled peanuts.	Flour and articles taking same rates.	Wheat and articles taking same rates.	Corn and articles taking same rates.	Hay and articles taking same rates.
10 and less	6	6	5	4	5
20 and over 10	8	8	6	5	6
30 and over 20	10	10	7	6	7
40 and over 30	11	11	8	6½	8
50 and over 40	12	12	9	7	9
60 and over 50	12½	12½	9½	7½	9½
70 and over 60	13	13	10	8	10
80 and over 70	13½	13½	10½	8½	10½
90 and over 80	14	14	11	9	11
100 and over 90	14½	14½	11½	9½	11½
110 and over 100	15	15	12	10	12
120 and over 110	15½	15½	12½	10½	12½
130 and over 120	16	16	13	11	13
140 and over 130	16½	16½	13½	11½	13½
150 and over 140	17	17	14	12	14
200 and over 150	19½	19½	16½	14½	16½
250 and over 200	22	22	19	17	19
Over 250	23	23	19	17	19

Rates for joint line application may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maxima.

Rates on the commodities next named may not lawfully exceed

the rates set forth in Exhibit No. 1 for the classes to which such respective commodities belong for like distances, and may not exceed the amount in cents per 100 pounds set opposite each of such commodities below.

	Cents.		Cents.
Agricultural implements (except hand implements)	45	Horse and mule shoes	33
Bagging and ties	24	Oil (refined petroleum)	28
Binder twine	38	Iron and steel pipe	24
Cans, cases and pails (tin)	48	Wrapping paper	44
Baskets	40	Printing paper	30
Chocolate raw materials	38	Tin articles	55
Dry goods	55	Wire and nails	28
Window glass	24	Door locks	55
Glassware (table)	45	Tools, files, and rasps	55

For hauls over joint lines rates on the above-named commodities may exceed those above named by the class differentials heretofore named for hauls over joint lines for the classes to which the respective commodities belong, subject to the maximum rates above named to and from points in common-point territory.

Rates named on commodities as per this Exhibit No. 2 apply also as shown in Exhibit No. 3.

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Exhibit No. 3.

Application of Rates.

Stone (Rough).

Rates on stone (rough) will apply on rough stone (not crushed), including rough dressed or sawed, cement silos.

Sand and Gravel.

Sand and gravel rates will apply on crushed stone (broken stone ranging in size up to 200 pounds weight, riprap, sand, gravel, common shells for paving, roofing, and similar purposes, soil, barnyard manure, clay, except treated or milled fire clay, also except ground clay in bags), cinders, crushed brick and brickbats.

Common Brick.

Common brick rates will apply on vitrified brick and fire clay.

Fire Brick.

Fire-brick rates will apply on fire-brick tiling, fire-clay flue lining, gypsum building blocks, draintile (not sewer pipe), and hollow building tile.

Junk.

Junk rates will apply on empty secondhand bottles; broken glass, glue stock (dry and green bones, hide cuttings and fleshings, sinews and pizzles, hoofs, horns, dried horn and gano piths or trims), oil press cloth (old or discarded), old rubber, old leather, scrap paper, rags, scrap metal (brass, copper, lead, tin zinc and babbitt), scrap lead dross, cotton factory sweepings (old string, old rope old bagging, cloth ends and refuse cotton packing, loose in sacks or bagging), leather scraps.

Machinery (Gin and Irrigation).

Rates on machinery (gin and irrigation) will apply on cotton gins and cotton-gin machinery of all kinds, cotton compresses, combination gins and compresses and parts thereof, irrigation plant machinery, consisting of engines and pumps, also air compressors, storage tanks, gasolene and water tanks, pipe, pipe fittings, valves, fluming, belting, pulleys, shafting, shaft boxes or bearings, shaft couplings, and set collars when shipped with and forming a part of such machinery.

Iron and Steel Articles.

Rates on iron and steel articles will apply on angle, hoop, rod, band, bar, boiler, plate, skelp, tank and boiler plates, band iron for water tanks, cisterns and conduits, nail plates, beams, columns and girders, bridge material, rivets, nuts, bolts, washers, channel iron, sees and tees, iron angles, turnbuckles, metal expanded sheets, including expanded steel lath and perforated iron lath, metal reinforcement, roofing and sheet.

Fruits, Melons and Vegetables.

Rates on fruits, melons, and vegetables will apply on peaches, pears, plums, Japanese persimmons, cantaloupes, beets, carrots, parsnips, tomatoes, and other vegetables.

Flour.

Four rates will apply on the following articles:

Barley, pearl.
Farina.
Flour:
  Barley.
  Buckwheat.
  Corn.
  Cotton seed, or flour made from cotton seed and wheat.
Pancake.
Flour—Cont'd:
  Prepared.
  Rice.
  Rye.
  Self-rising.
  Wheat.
Grits.
Hominy.
Meals.
Oat flake.
Oat groats.
Oatmeal.
Oats, rolled.
Rye, roiled.
Wheat, cracked.
Wheat, crushed.
Wheat, rolled.

Wheat.

Wheat rates will apply on the following articles:

Alfalfa, ground.
Barley.
Beet pulp, dried.
Bran (except rice bran).
Buckwheat.
Buckwheat feed (bran and middlings).
Buckwheat hulls.
Chops:
  Barley.
  Corn.
  Egyptian wheat.
  Feterita.
  Kaffir corn.
Milo maize.
Oat.
Rye.
Wheat.
Hominy feed.
Kaffir Corn, crushed.
Linseed cake.

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Linseed meal.
Masilina.
Middlings.
Mill feed.
Mill stuff.
Milo maize, crushed.
Meal:
  Alfalfa.
  Barley.
  Corn.
  Feterita.
  Peanut hay.
  Rye.
Mica grit.
Oat clippings.
Oyster shells, ground or crushed.
Peas, field, dried.
Poultry grit, including crushed stone.
Rye.
Screenings, grain.
Seeds:
  Alfalfa.
  Beggar weed.
  Broom corn.
  Bromis inermis.
  Cane.
  Clover.
  Cumin.
  Flax.
  Grass.
  Hemp.
  Hungarian.
  Millet.
  Mustard, wild.
  Rape.
  Sorghum.
  Vetch.
Shorts.
Tortina.
Wheat.

Also on:

Chicken feed, made of grain, seeds, and oyster shell or crushed stone.

Mixed feeds composed of two or more articles taking wheat, corn, or hay rates.

Mixed feeds composed of one or more articles taking wheat or corn rates, and cotton seed, cotton seed products, rice products, or sunflower seed.

Mixed feeds composed of blackstrap molasses and any one or more of the following: Articles taking wheat or corn rates, cotton seed, cotton seed products, or rice products. Prepared stock and poultry feeds (exclusive of medicated stock feeds; also exclusive of stock and poultry feeds the invoice value of which is higher than 10 cents per pound.)

NOTE.—Mixed feed as above specified, where reference is made hereto, will take wheat rates regardless of whether the same are cooked or not cooked, and not to exceed 5 per cent of the mixture may consist of salt or other condiments or medical articles.

Corn.

Corn rates will apply on the following articles:

Corn (except pop corn).	Egyptian wheat.
Feterita.	Kaffir corn.
Milo maize.	Oats.
Spelts.	

Also on oats and barley, blended, when the proportion of barley does not exceed 25 per cent.

Hay.

Hay rates will apply on the following articles:

Class 1. Alfalfa hay.

Class 2. Johnson grass hay.

Class 3. Millet hay.

Class 4. Prairie hay, including prairie, Bermuda, crab, mesquite, and other wild grass hay.

Class 5. Sorghum hay, including cane, milo maize, and Kaffir corn hay, and corn stalks.

Class 6. Straw, including rice, rye, wheat, oat, millet, and barley straw.

Class 7. Vine hay, including peanut, pea, and bean hay.

Class 8. Corn husks.

Class 9. Peanut hulls.

Agricultural Implements, Except Hand Implements.

These rates will apply on agricultural implements other than hand agricultural implements (except hand implement binder twine and parts thereof, listed under the head of "agricultural implements, other than hand," in current western classification No. 59 (R. C. Fife's I. C. C. No. 11), threshers and thresher engines; farm wagons and parts thereof, including one feed box for each wagon; farm trucks; dump carts and dump wagons, knocked down; windmills and parts thereof, in straight or mixed carloads with binder twine, windmill and hand pumps, wooden or iron (see note B); and gasoline engines (See note A); minimum weight, 24,000 pounds.

NOTE A.—The aggregate amount of binder twine, windmill and hand pumps and gasoline engines that may be included in any shipment under the rates named in this item shall not exceed 8,000 pounds.

NOTE B.—The number of windmill and hand pumps that may be included in any shipment shall not exceed the number of windmills included in the car.

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Bagging and Ties.

Rates on bagging and ties will apply on bagging for baling cotton, cotton bale ties and buckles, straight or mixed carloads, bagging, straight carloads, 24,000 pounds. Ties and buckles, straight carloads, or mixed with bagging, 30,000 pounds.

Cans, Cases, and Pails (Tin).

(*a*) Rates on cans, cases and pails will apply on cans, tin only, and cases, empty (including lard pails, paint pails, lithographed cans, japanned cans, tin oil cans, tin boxes and fruit cans), having straight sides, not nested, carloads, minimum weight, 9,000 pounds per 36-foot car (see note 1).

(*b*) Same not having straight sides, nested, carloads, minimum weight, 12,000 pounds per 36-foot car (see note 1).

The following minimum weights shall apply on cans, tin only, and cases, empty, as described in this item on shipments loaded in cars of the following lengths:

Minimum weights shown in column No. 1 apply on cans having straight sides, not nested. Minimum weights shown in column No. 2 apply on cans not having straight sides, nested.)

Length of cars.	No. 1 pounds.	No. 2 pounds.
Cars 36 feet 6 inches and under	9,000	12,000
Cars 36 feet 7 inches to and including 40 feet 6 inches in length (ordinary box cars)	10,000	13,440
Cars 39 feet 7 inches to and including 40 feet 6 inches in length (furniture equipment)	11,000	15,000
Cars 40 feet 7 inches to and including 45 feet 6 inches in length	13,000	17,400
Cars 45 feet 7 inches to and including 50 feet 6 inches in length	16,000	19,800

Baskets.

Rates on baskets will apply on fruit and melon baskets, carloads; also hampers, straight carloads, set up nested or nested and racked, minimum weight 14,000 pounds, except on hampers in straight carloads or when mixed with baskets, 24,000 pounds.

Chocolate Raw Material.

Rates on chocolate raw materials apply on chocolate coatings and chocolate liquors, packed in wooden cases.

Dry Goods.

Rates on dry goods will apply on boots and shoes, including rubber boots and shoes, books, printed, blank and sales, brushes, carpets,

carpeting and rugs, clocks, clothing as described in note 1; crockery, drugs and medicines, dry goods, as described in note 2; earthenware, glassware, not including cut glass, hats and caps, herbs, as described in items 1, 2 and 3, page 178, western classification No. 53 (R. C. Fife's I. C. C. No. 11), or reissues; leather goods, as described in note 4; linings, carpet, linoleum and oilcloth, notions, as described in note 3; roots, as described in items 9 to 24, page 291, western classification No. 53 (R. C. Fife's I. C. C. No. 11), or reissues; rubber goods as described in note 5; stationery, toys, and umbrellas, in straight or mixed carloads, minimum weight 24,000 pounds.

Note 1.—Clothing:

Aprons.	Collars.	Petticoats.
Blouses.	Drawers.	Pajamas.
Brassiers.	Dresses.	Rompers.
Cloaks.	Hosiery.	Shirts.
Clothing.	Knit goods.	Sweaters.
Clothing, oil and rubber.	Kimonos.	Underwear.
Corsets.	Neckwear.	Waists.
	Overalls.	

Note.—Dry goods: Cotton piece goods, viz: Backbands, bats and wadding, calico, canton flannel; canvas; coarse jeans; cotton plaids, cottonades; cotton warp; cotton waste; cotton kerseys; cotton rope; crash; cotton; domestic checks; stripes and cheviots; cotton duck; denims; drills; domestic ginghams; glazed fabrics; osnabergs; sheeting; silesias; sack material; tassel cloth; cotton twine; ticking; window hollands and shade cloth; plain, uncut, and undecorated; cotton jeans.

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Bathrobes.	Handkerchiefs.	Sheets.
Belting.	Lace curtains.	Shoe laces.
Blankets.	Laces.	Shoulder pads.
Braids, cotton.	Lap robes.	Suiting.
Comforts.	Linen.	Towelings.
Cotton tape.	Mats and matting.	Towels.
Crash.	Mosquito netting.	Trimmings.
Diaper cloth.	Napkins.	Upholstery goods.
Draperies.	Pillow cases.	Velvet.
Dress shields.	Portieres.	Velveteen.
Elastic web.	Quilt padding.	Woolen domestic.
Embroidery.	Quilts.	Woolen, flannel.
Felt.	Ribbon.	Woolens.
Fixtures, curtain.	Rollers, shades.	Yarn, woolen and cotton.
Gauze dressing.	Shades, window.	

Note 2.—Notions:

Buttons.	Hooks and eyes.	Pens.
Garters.	Molds, button.	Pins.
Hair curlers.	Needles.	Thread.
Hooks, button.		

NOTE 4.—Leather goods: Bags, gloves, leather; belts; pocketbooks and cases; leggings.

NOTE 5.—Rubber goods: Bathing caps; gloves; syringes; hose, as described in western classification No. 53 (R. C. Fife's I. C. C. No. 11); water-bottles.

Glassware (Table).

Rates on glassware will apply on glassware, common table (invoice value not exceeding $5 per 100 pounds and so receipted for, in barrels, tierces, or hog-heads, minimum weight 24,000 pounds per car.

Horse and Mule Shoes.

Rates on horse and mule shoes will apply on horse and mule shoes and toe calks, straight or mixed carloads, minimum weight 36,000 pounds.

Oil (Refined Petroleum).

Rates on oil will apply on oil, petroleum, and products, viz.: Refined (illuminating or burning) petroleum, benzine, benzole, petroleum (lubricating), naphtha and gasoline, in tank cars furnished by shippers, straight or mixed carloads; also in barrels, iron drums, and cases, and petroleum in glass (boxed), in jacketed cans and tin cans (boxed), petrolatum or petroleum jelly (vaseline) and petroleum oil, in barrels and cases; also axle grease and paraffin wax, straight or mixed carloads, minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in item No. 296-*f*, or reissues thereof, of Southwestern lines' classification exception and rules circular No. 1-F (F. A. Leland's I. C. C. No. 1026).

Iron and Steel Pipe.

Rates on iron pipe will apply on wrought-iron or steel pipe, welded or seamless, and iron or steel boiler tubes in straight or mixed carloads, and on iron or steel conduit pipe, in straight or mixed carloads, minimum weight 46,000 pounds; on cast-iron pipe, couplings, and connections in straight or mixed carloads, minimum weight when 18 inches and less in diameter, 36,000 pounds; when over 18 inches in diameter, 30,000 pounds; pipe hangers in straight carloads or in mixed carloads with cast-iron pipe, couplings, and connections, 18 inches and less in diameter, minimum weight 36,000 pounds; in mixed carloads with cast-iron pipe, couplings, and connections, over 18 inches in diameter, minimum weight 30,000 pounds

Iron or steel or iron body couplings, connections, and fittings (see note 1); iron fire hydrants or plugs; cast-iron service or valve boxes; iron and iron body valves (see note 1); valve springs; water gates, water meter, and stopcock boxes; steel drill rods; iron body

well-pipe screens, in straight or mixed carloads, minimum weight 46,000 pounds (see note 2).

NOTE 1.—Pipe fittings and valves under 3 inches in diameter must be packed in boxes, barrels, kegs, casks, or bags, or strung on wire.

NOTE 2.—Brass and bronze valves, brass pipe fittings, steam traps, steam and oil separators, and iron body water strainers, aggregating not more than 15,335 pounds, may be included in a carload with any or all of the articles specified in this paragraph, subject to a minimum weight of 46,000 pounds for the entire lot.

Wrapping Paper.

Rates on wrapping paper will apply on wrapping paper, in bundles, boxes, or crates; printed wrapping paper, including wrappers (exclusive of labels), in bundles, boxes, or crates; paraffined, oiled, waxed, and rosin-glazed paper, in bundles, boxes, or crates; tissue paper (exclusive of cigarette paper), in bundles, boxes, or crates; paper bags, in bundles or rolls, paper tablets and tabs (exclusive of billheads), boxed or crated; in straight or mixed carloads, minimum weight 36,000 pounds.

Printing Paper.

Rates on printing paper will apply on printing paper, unprinted, invoice value not exceeding 3½ cents per pound, and no receipts or, in boxes, crates, bales, or rolls; minimum weight 36,000 pounds.

Tin Articles.

Rates on tin articles will apply on tin articles as described in items 19 to 28, page 314; 1 and 2, page 315 western classification No. 51 (R. C. Fyfe's I. C. C. No. 11) or reissues, minimum weight 18,000 pounds; subject to item 316-A, Southwestern lines' classification rules circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues.

Wire and Nails.

Rates on wire and nails will apply on (a) wire (iron or steel, barbed, coppered, galvanized, painted, or plain; wire hoops; hay bale ties; nails, staples, and spikes; wire fence stays and wire strand, in straight or mixed carloads, or in mixed carloads with articles described in paragraph (b), minimum weight 36,000 pounds; (b) woven wire field fencing; poultry netting wire; wire cloth or woven wire cloth; concrete reinforcement (woven wire or a combination of bar iron and wire); fence gates and fence stretchers; and cast iron or steel fence posts (not ornamental), in straight or mixed carloads, minimum weight 30,000 pounds.

Door Locks.

Rates on door locks will apply on door locks (rim or mortise), door latches, bolts, plates, and knobs; sash fasts and lifts, transom lifts, and hangers, straight or mixed carloads, minimum weight 30,000 pounds.

Tools, Files and Rasps.

Rates on tools, files, and rasps will apply on files or rasps, iron or steel, in barrels or boxes, carloads, minimum weight 24,000 pounds.

Endorsed: No. 295 Equity. Eastern Texas Railroad Company et al. vs. Railroad Commission of Texas et al. Second Supplemental Bill of Complaint (and order setting same down for hearing). Filed Aug. 4, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy. Eq. Order Book, p. 88.

38 *Defendants' Second Supplemental Answer.*

Filed August 9, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

Equity. No. 295.

Eastern Texas Railroad Company et al., Plaintiffs,

vs.

Railroad Commission of Texas et al, Defendants.

Defendants' Second Supplemental Answer in Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint.

To said Honorable Court:

Come now B. F. Looney, Attorney General of Texas, and Luther Nickels, Assistant Attorney General of Texas, named as Defendants in Plaintiffs' Second Supplemental Bill of Complaint, and make reply and answer thereunto, and for such reply and answer say:

I.

These Defendants admit the allegation in said Supplemental Bill contained to the effect that they are, respectively, Attorney General of Texas and Assistant Attorney General of Texas, and they say that as such officers of the State of Texas they were and are charged with the duty of enforcing the laws of the State of Texas and the orders of the Railroad Commission of Texas (the same being an administra-

tive board and agency of said State), and that in the filing and pr
ecuting of said suit No. 34,832 in the District Court of Travis Coun
Texas, Fifty-third Judicial District, they, as such officers, thereun
duly authorized, were and are acting under and by virtue of, a
were and are seeking to enforce the statutes of the State of Texas
the orders of said administrative board pertaining to the subject m
ter of said suit. They say, however, that at the time of the filing of
suit No. 34,832 they believed, and now believe and, therefo
37 allege, that the subject matter thereof was not involved in
proceeding in this cause, Equity No. 295, in this Court,
that the action taken by them and the relief sought in said cause
34,832 were and are in no way prohibited or enjoined by any or
heretofore entered in this Court in said Equity No. 295.

The relief sought in Plaintiffs' Second Supplemental Bill of C
plaint is to suspend or restrain the enforcement, operation and ex
tion of the statutes of Texas and the orders of the Railroad Comm
sion of Texas by restraining the action of these Defendants, "offi
of such State" as aforesaid, and, therefore, these Defendants sug
that it will be necessary to convene a bench of three judges, as
vided for in Section 266 of the Judicial Code and in 38 Stat.
Large, p. 219, to pass upon the application for injunction presen
in said Second Supplemental Bill of Complaint and the motion he
presented, and pray that such action be taken and that said appl
tion be set for immediate hearing.

II.

These Defendants deny that such portions of Texas Lines' T
No. 2-B as purport to publish rates, rules and regulations applic
to shipments of freight between points within the State of Texas,
moving wholly within said State were filed with the Interstate C
merce Commission "in pursuance of and under the authority of
order of July 7th, 1916," as alleged in said Second Supplem
Bill of Complaint. They further deny that the Interstate Comm
Commission "refused to disturb said Texas Lines' Tariff No. 2-B,
that said Commission "permitted the said Tariff to continue in
force and effect," in so far as the same purported to apply to
ments moving wholly within the State of Texas.

And in this connection these Defendants say that there was n
no provision of law, or any order of the Interstate Commerce Com
sion, requiring or permitting Plaintiffs to file with said Commi
such portions of said Tariff as purport to apply to and go
38 shipments wholly within the State of Texas, and that the
Commission had no authority, and did not undertake to
cise authority, to require such filing of such portions of said T
nor to suspend the same, nor to authorize the same to be and re
in force as applicable to and governing shipments wholly within
State of Texas; but if any order exists purporting to give such
tions of such tariff such effect the same is void for lack of author
make it.

III.

These Defendants deny that it was the intention of this Court in granting the Temporary Injunction referred to in Plaintiffs' Second Supplemental Bill of Complaint to "protect the said Plaintiffs and intervening railway companies in charging the rates prescribed in said Texas Lines' Tariff No. 2-B, and the supplements thereto," as alleged in said Supplemental Bill of Complaint, in so far, at least, as the rates sought to be enjoined in said cause No. 34,832 in the District Court of Travis County, Texas, are concerned, and deny that such injunction and the order upon which the same was issued had any such effect, and deny that the legality and authority of the carriers to charge such rates was in any way therein adjudicated.

And in this connection it is shown unto the Court that said order of this Court, by its express terms, dealt only with such rates as were "prescribed and authorized by the Interstate Commerce Commission by said order of July 7th, 1916," while the rates sought to be enjoined in said cause No. 34,832 are not in anywise "prescribed or authorized by the Interstate Commerce Commission by said order of July 7th, 1916," nor was the contention that such particular rates were not so prescribed or authorized, nor the portions of said Tariff relevant thereto, presented to this Court heretofore.

It is further shown unto the Court that said order of the Interstate Commerce Commission of date July 7th, 1916, was made (except as in the particulars alleged in the Original and Supplemental Answers of B. F. Looney, Attorney General, and the Railroad Com-
39 mission of Texas, heretofore filed in this Court in Equity No. 295 which portions of said answer are here referred to and made a part hereof, upon the complaint of the Railroad Commission of Louisiana, in behalf of Shreveport, Louisiana. Under the orders of the Railroad Commission of Texas in force at the time of the filing of said Complaint, and now in force, and which are sought to be enforced in said cause No. 34,832 to the extent and under the conditions therein alleged generally no differential rates could be charged on shipments moving wholly within Texas unless and until such shipments had so moved a minimum distance of 250 miles, and, as appears from said Complaint, no question was raised by the Complainant before the Interstate Commerce Commission as to the justice or reasonableness of this requirement, nor was any contention made that the same operated to discriminate against Shreveport, nor did the Complainant make any contention that it was, or would be, necessary for the carriers to charge differential rates on shipments moving for distances of less than 400 miles in order to prevent an unlawful discrimination against Shreveport, Louisiana, but, on the contrary, such contention was expressly negatived. On page 10 of said Complaint (a copy of which is now on file with the papers in this Court in Equity No. 295, and to which reference is here made) said Complainant proposed a scale of differential rates, and on page 9 thereof said Complaint alleged that differential rates should "not be available when the entire distance traversed is 400 miles or less," and that "the rates for

shipments transported distances exceeding 400 miles, of which 400 miles or more consists of mileage in territory not subject to differential rates, to be made by employing the following differentials (note: i. e., those set forth on page 10) for the distance in differential territory actually traversed by the shipment." As will appear from page 11 of said Complaint, the relief claimed to be necessary to prevent discrimination against Shreveport was that the carriers should not be
40 permitted to charge "rates on the various classes and commodities for intra-State movement within the State of Texas, lower than are contemporaneously maintained for like distances to and from Shreveport from and to Texas destinations."

Acting upon these allegations by the Complainant, as aforesaid, the Interstate Commerce Commission made the order of July 7th, 1916, and such order must be construed, Defendants say, together with the pleadings upon which it was made.

The differential rates prescribed as maxima by said order are prescribed alone in those parts of the order which deal with the interstate rates between Shreveport, Louisiana, and Texas points, which parts of the order do not purport to refer to rates on shipments wholly within Texas. Differential rates are not at all referred to in those parts of the order which apply to or affect rates applicable to shipments within Texas. The only parts of the order which refer to or affect rates on intra-State shipments are Paragraphs IX and X thereof which Paragraphs simply seek to prohibit the carriers from charging rates on shipments moving between Shreveport, Louisiana, and Texas points "in excess of those contemporaneously applied by them for the transportation of like property for like distances between points in Texas."

On account of the geographical location of Shreveport, Louisiana, with reference to the location of the "Differential Territory Line" it is impossible for a shipment to move between Shreveport and any point in "Differential Territory" or on said line unless the same shall move more than 351 miles, or, in fact, more than 400 miles. No differential rates can be charged on any shipment between Shreveport, Louisiana, and any Texas point unless the same shall move for more than 400 miles. Defendants say, therefore, that before a shipment between points in Texas can move for "a like distance," as that term is used in Paragraphs IX and X of said order, it must move for at least
400 miles, and there is no justification in said order for the
41 charging of differential rates on Texas shipments until the same shall move a distance at least equal to the minimum distance to be traversed by a shipment moving between Shreveport and a point on, or west of, said differential line.

In the alternative, Defendants say that said order of July 7, 1916, does not, and does not purport to, authorize the charging of differential rates on shipments moving for distances less than 400 miles wholly within Differential Territory, and does not and does not purport to authorize the charging of such rates on shipments having origin in Differential Territory and moving to destinations in Common Point Territory when the entire distance traversed is less than 400 miles, and does not and does not purport to authorize the charg-

ing of such rates on shipments having origin west of said Differential Line and destination on said Line when the entire distance traversed is less than 400 miles.

IV.

Defendants say that the jurisdiction of the Interstate Commerce Commission to affect rates prescribed by the State of Texas, or under its authority, is limited by the existence of unjust discrimination, and that otherwise it has no authority to pass upon or in anyway deal with or affect the volume of a State made rate, and that from its jurisdiction to prevent unjust discrimination or otherwise it derives no power to create discrimination against intrastate commerce, and that its order should not be so construed as to authorize the creation of such discrimination. The order as construed by these Defendants, with respect to Differential Rates, prevents discrimination against interstate commerce; as construed by Plaintiffs it goes further than necessary to remove discrimination against interstate commerce and creates manifold discriminations against intrastate commerce.

42 In this connection it is shown that the pleadings upon which Paragraphs "IX" and "X" of the order are based and the order itself, as well as the Report accompanying the order, proceed upon the theory alone that the charging of a higher rate on interstate shipments than are charged upon intrastate shipments for equal distances produces discrimination. Defendants say that even if unlawful discrimination is produced in this way, it is prevented when the same rate for equal distances is required. Illustrative of this:—If a rate of 37 cents, first class, is charged on a shipment moving fifty miles from El Paso or Amarillo and a rate of 37 cents, first class, is charged on a shipment moving fifty miles from Shreveport, there is no discrimination against Shreveport; but under the order as construed by the carriers, the carriers charge 42 cents, first class, on the shipment moving fifty miles from El Paso or Amarillo, while they only charge 37 cents on a like shipment moving fifty miles from Shreveport. Acme, Texas, is a point on the Differential Line approximately 419 miles from Shreveport, and a shipment moving to Acme from Shreveport would require a joint line haul; on such a shipment, a rate of approximately $1.14, first class, would apply (8 cents being added for joint-line haul); Dalhart is approximately 220 miles west of Acme, and a shipment between the points would be a single-line haul, but under the construction given the order by Plaintiffs a rate of approximately $1.10 would apply to such a shipment. Frances is a station on the line of the Ft. W. & D. C. Ry., approximately 279 miles south of Amarillo, Texas, and 278 miles west of Shreveport; a shipment between Amarillo and Frances would be a one-line haul; and between Shreveport and Frances it would be a joint line haul; under the construction given the order by the Plaintiffs a rate of $1.00, first class, would apply to the Shreveport joint-line shipment, while a rate of $1.14 would apply to the single line shipment from Amarillo. Big Springs, Texas, is a point on the line of the Texas & Pacific

42 Railway, about 488 miles west of Shreveport and 346 miles east of El Paso; if an El Paso merchant and a Shreveport merchant competed for the trade at Big Springs the Shreveport merchant would get his goods hauled to Big Springs for $1.06 per 100 pounds, first class, while his El Paso competitor, under the construction given the order by Plaintiffs, would have to pay $1.33 per 100 pounds. Sweetwater, Texas, is a station on the line of the Texas & Pacific Railway approximately 423 miles west of Shreveport and 412 miles east of El Paso, Texas; if a Shreveport merchant and an El Paso merchant should compete for the trade at Sweetwater, the Shreveport man would have his goods hauled to Sweetwater at a rate of $1.06 per 100 pounds, first class, while the El Paso merchant would have to pay $1.36 per 100 pounds. Like illustrations of discriminations produced against Texas shippers by the construction placed upon the order by the carriers could be multiplied indefinitely, and Defendants say that no such construction can reasonably be given the order; and that if the order may be so construed, the same is void, and should be set aside.

V.

Defendants deny Plaintiffs' allegation that "the essential thing in the consideration and application of the so-called differential is to apply to each shipment, no matter what its origin or destination may be, the differential corresponding to the distance traversed by the shipment in differential territory," and say that the essential thing in construing the order, and its power to affect Texas State rates is to consider what construction thereof will prevent unjust discrimination against interstate shipments,—in other words, to consider how far it was necessary for the Interstate Commerce Commission to go in order to prevent unjust discrimination against Shreveport (which is the limit of their jurisdiction) and construe the order in the light of this limitation. With the volume 44 of the rate applicable to intrastate shipments the Interstate Commerce Commission has no lawful concern except when such rate, for like distances, is substantially lower than the interstate rate.

In this connection, Defendants say that the illustrations given in Plaintiffs' Supplemental Bill do not tend to show a reasonable construction of the order. Plaintiffs say that a shipment from Ft. Worth, Texas, to Metz, Texas, would, under our construction, only pay $1.03 first class, while the Shreveport shipment to Metz would pay $1.15; true; but the Ft. Worth shipment has not moved a "like distance"; the Shreveport shipment would move 571 miles while the Ft. Worth shipment would only move 348 miles, and the fact that the Shreveport shipment moved 223 miles further certainly would justify the difference of 12 cents in the rate. So in the case of the Dallas shipment as compared with the Shreveport shipment to Metz, there is no "like distance," and the fact that the Shreveport shipment moved 191 miles further justifies the difference in the rates. To the comparison of the shipment from El Paso to Lasca,

Texas, with shipments from Shreveport and Denison to Mata, Texas, the all sufficient answer is that under no theory could the shipment from El Paso to Lasca involve competition with the shipment from Shreveport to Mata, and Shreveport could not be discriminated against therein.

VI.

Defendants deny the facts alleged in and in connection with the "Illustrations" set forth on page 6 of Plaintiffs' said Supplemental Bill.

VII.

Defendants deny that the effect of granting the injunction prayed for in said cause No. 34,832 "would be to suspend in part said order of the Interstate Commerce Commission of July 7th, 1916," as alleged by Plaintiffs, and say that the granting of such injunction would be in harmony with said order as properly construed.

45

VIII.

Defendants deny that this Court prior to the filing of said suit No. No. 34,832 acquired jurisdiction of the subject-matter thereof, or that it is necessary for this Court to grant the relief prayed by Plaintiffs in order to protect such jurisdiction as it had previously acquired.

IX.

Defendants say that the District Court of Travis County, Texas, 53rd Judicial District, had properly acquired jurisdiction of the matters involved in said cause No. 34,832 prior to the filing of Plaintiffs' said Supplemental Bill, and that in said cause Plaintiffs are by law guaranteed full opportunity to present and have adjudicated all matters of defense which they may have, and all matters set forth by them in their Supplemental Bill, and that any order or judgment that might be entered in said cause No. 34,832 is subject to review, in due course, not only by the Appellate Courts of the State but by the Supreme Court of the United States. No penalties are sought to be inflicted upon Plaintiffs, or any of them, in said cause No. 34,832. Defendants say that the comity properly existing between the Courts of the State and of the United States ought here to be observed and that this Court ought not to take jurisdiction over the matters presented by Plaintiffs and ought not to seek to oust the District Court of Travis County of jurisdiction of the matters involved in said cause No. 34,832.

X.

Defendants say that they cannot read, at least in advance, the minds of the various shippers of the State and cannot, therefore, allege under oath just what actions such shippers would in the future

take in the event the District Court of Travis County should grant a Temporary Injunction in said cause No. 34,832; nor can they read in advance the intention of the Honorable District Judge of said State Court and allege, under oath, what judgment he will
46 or will not render in said cause; but Defendants do say that they know of no reason why the Plaintiffs would be harassed and vexed by a multitude of suits for penalties on the part of the shippers of the State in the event such injunction should be granted, and Defendants do not believe that any such results would follow, and therefore deny such allegations as made by the Plaintiffs in their said Supplemental Bill.

X.

Defendants deny the allegation made by Plaintiffs in their said Supplemental Bill to the effect that "exclusive jurisdiction is vested in the Interstate Commerce Commission in the first instance to determine whether the rates complained of in said suit in the State Court are in accordance with or authorized by its order," and deny that it is the duty of Defendants to apply to said Commission for a supplemental order as alleged. On the contrary, they say, that said State Court hath the power to construe said order, if a construction thereof be rendered necessary by such answers as may be filed by the Defendants in said cause No. 34,832, and that if the State Court should misconstrue said order its judgment and construction would be subject to review and correction by the Appellate Courts of the State and by the Supreme Court of the United States.

Defendants further say that the Interstate Commerce Commission not only has not such exclusive jurisdiction, but that such Commission, acting through its duly authorized agents and officers, has, on numerous occasions since the making and taking effect of such order, and since the filing and taking effect of said Texas Lines Tariff 2-B, disclaimed any such jurisdiction as to intrastate rates and shipments and declined to exercise the same, and proof of this allegation will be offered upon the hearing hereof.

From the foregoing premises it results that the shippers of Texas and the State of Texas acting through its duly authorized officers would have no remedy for the redress of their rights if the
47 relief prayed for by Plaintiffs should be granted.

XI.

Defendants say that the allegations of Plaintiffs' said Supplemental Bill with respect to the fact that the causes before the Interstate Commerce Commission in which said order of July 7th, 1916, was made have been reopened and a rehearing is being had thereon afford no basis for the relief prayed by them. Irrespective of what further orders the Interstate Commerce Commission may make in said causes, such further orders cannot have any effect upon the rights of the shippers of the State, and of the State, growing out of the operation of the order of July 7th, 1916, up to this time, and up to the time the same may be annulled or modified. The legality of said order

must be determined at some time by the Courts in order that the State of Texas and the shippers affected thereby may know what their rights are and what relief they are entitled to if such order is void in whole or part. If said order is void in any part as applicable to intra-State shipments, any action that the Interstate Commerce Commission may take hereafter cannot affect the rights of the State of Texas, and of the interested shippers growing out of the charging by the Plaintiffs of illegal rates under the supposed authority of such a void order.

Furthermore, when the temporary injunction referred to was granted at New Orleans in April, 1917, these Defendants, and all Defendants then before the Court had good reason to expect, and did expect, that the matters involved in Equity No. 295 would be finally tried at Austin at the term of this Court in June, 1917, and on June 12, 1917, all the Defendants in said cause, including the Defendant Looney, appeared and when said cause was called on said day announced ready for trial and insisted upon a trial, but the plaintiffs presented and urged an application for a continuance of said cause which was granted over the protest of the Defendants.

48 XII.

The Plaintiffs are not entitled to the relief prayed for in their said Supplemental Bill because Paragraphs IX and X of the order of the Interstate Commerce Commission of date July 7th, 1916, pleaded by them as the basis of such relief, is void in whole and in part for each and all of the following reasons, towit:

(1) Said portions of the order, by its own terms, as construed by the carriers, apply to intra-state shipments throughout the State of Texas, and as construed violates the following portion of Section 1 of the Act to Regulate Commerce, towit:

"Provided, however, That the provisions of this Act shall not apply to the transportation of * * * property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped from or to a foreign country from or to any State or Territory aforesaid."

(2) Said portions of said order are too indefinite as to the points or territory to which it might lawfully apply to be enforcible, and the same does not in any way define the territory commercially tributary to Shreveport, Louisiana, or the territory or points in Texas in or with respect to which there is competition between Shreveport, Louisiana, and any Texas points, or in or with respect to which there was, is or can be, any discrimination against Shreveport, Louisiana, by reason of the relation of State and interstate rates.

(3) Said order, as so construed, undertakes to prescribe interstate rates applicable between Shreveport, Louisiana, and points in Texas from all distances from one mile to twenty miles, and to make the same the measure of what Plaintiffs call the "standard rates" between points within the State of Texas for such distances, although the shortest distance between Shreveport, Louisiana, and any Texas point by the line of railway is more than 20 miles, and although the

distance between Shreveport, Louisiana, and the nearest point on the Texas-Louisiana State Line by the line of any railway is 20
49 miles or more, and although there cannot possibly be an interstate shipment between Shreveport, Louisiana, and any Texas point which does not, necessarily, move more than 20 miles. Said portions of the order cannot, therefore, be properly construed as applicable to shipments moving between points in Texas for distances of 20 miles or less, and if so construed, or applicable, the same is void in whole, or at least to such extent.

(4) The report of the Interstate Commerce Commission accompanying said order, on pages 120 and 121 thereof, affirmatively shows that a material, if not the sole, reason leading the Commission to undertake to make Paragraphs IX and X of the order apply to shipments between points in Texas west of "Eastern Texas" (as defined in 34 I. C. C., 472), if in fact it did undertake to make said order so apply, was an effort to prevent supposed discrimination as between localities and cities in Texas with respect to rates applicable on movements in intrastate commerce, and that the Commission did not make its order so apply, if it intended for it so to apply, to prevent unlawful discrimination against interstate traffic.

Defendants say that the Interstate Commerce Commission had no power to make an order in whole or part for the purpose of preventing discrimination as between movements wholly in intra-state commerce and thereby to affect State-made rates and regulations applicable to such intra-state movements, and because the Commission did make Paragraphs IX and X of the order, and other portions thereof, so applicable for the reasons shown on pages 120 and 121 of its report it exceeded its jurisdiction and committed an error of law which renders said order void in whole or at least renders such portions of the order void as applicable to territory west of said territory defined as "Eastern Texas," and said order, therefore, affords no justification for the relief prayed for by Plaintiffs in their Second Supplemental Bill of Complaint.

50 In this connection it is shown unto the Court that said order as aforesaid was made upon the complaint of the Railroad Commission of Louisiana in behalf of Shreveport, Louisiana, and that the said Complainant did not pray for the extension of said order, or the previous orders, to shipments moving between points in Texas wholly west of said "Eastern Texas." The prayer of said Complaint is set forth on pages 12 and 13 thereof, a true copy of which Complaint certified as correct by the Secretary of the Interstate Commerce Commission is now on file with the papers in this cause and reference thereto is here made. In said prayer the Complainant requested relief as follows: "That after a full hearing and due investigation said Interstate Commerce Commission will, by proper order, require the defendants to cease and desist from the aforesaid violations of the Act to Regulate Commerce, and will, by further order, prescribe on all the various classes and commodities * * * moving between Shreveport and points on the defendant lines just and reasonable rates for the transportation thereof between said Shreveport and all stations on respondents' lines in said Eastern

Texas, and require the establishment of non-discriminatory rates, rules and regulations for such transportation from or to Shreveport (Note: i. e. from "said Eastern Texas" to Shreveport, or from Shreveport to "said Eastern Texas") to or from all Texas points" (Note: i. e. "to * * * all Texas points" from "said Eastern Texas," "or from all Texas points" to "said Eastern Texas."). Defendants say that the term "the aforesaid violations of the Act To Regulate Commerce" as used in the above quoted prayer refer to the allegations contained in Paragraph IV, page 8, of said Complaint wherein it is said that the rates charged and collected on shipments between Shreveport and Texas points are "unjust and unreasonable in violation of Section 1 of the Act To Regulate Commerce" and to the allegation of unjust discrimination with respect to traffic to
51 and from and within "said Eastern Texas," and does not refer to shipments between points in Texas moving wholly west of said "Eastern Texas."

Defendants, further, say that the Railroad Commission of Louisiana, in behalf of Shreveport, Louisiana, or in any other way, had no authority to, and did not, make any complaint of discrimination in behalf of Texas localities, but if it be held to have done so it had no authority to do so and such complaint on behalf of such Texas localities gave the Interstate Commerce Commission no jurisdiction to remove or prevent discrimination as between Texas localities.

(5) It affirmatively appears from the Report of the Interstate Commerce Commission accompanying said order,—and on pages 91 to 95, and 100 to 107, and Appendix C, and other portions thereof,—that one of the material reasons, if not the sole reason, leading the Commission to prescribe and authorize,—if it did so,—rates and regulations as applicable to intra-state shipments in excess of those therefor prescribed by the Railroad Commission of Texas, and especially such Differential Rates, was the supposed inadequacy of such State made rates to afford the carriers a reasonable return upon their investment with respect to their intra-state traffic. Defendants say that the Interstate Commerce Commission had no authority to inquire into or pass upon the reasonableness of such intra-state rates, and because it did so, and because thereof it undertook to make paragraphs "IX," "X," "XI" and "XII" thereof applicable to practically all shipments between points within the State of Texas, it committed such an error of law as to render said order, or such portion of said order, void as so applicable, and the same affords Plaintiffs no basis for the relief prayed in their Second Supplemental Bill of Complaint.

That the Interstate Commerce Commission considered what rates would be reasonable as applicable to interstate shipments, and did not confine itself to the questions of the reasonableness of the
52 interstate rates involved and the prevention of discrimination against interstate commerce is shown by the discussion of the order here involved, and other cases of a general similar character, contained in its Thirteenth Annual Report (1913) and especially on page 90 of said Report, wherein it is said:

"The situation requiring adjustment presents two rates, one state

and the other interstate, the one higher or lower than the other, applicable on the same commodity for transportation by the same carrier under substantially similar circumstances and conditions. Assuming both of these rates which give rise to the controversy to lie within the zone of reasonableness, an assumption which is not always warranted by the facts, the difference between them creates the unjust discrimination and the undue preference of advantage which we are called upon to remove. The single point within the zone of reasonableness which presents the reasonable rate, is therefore, the point to be sought."

These Defendants say that the Interstate Commerce Commission only has authority to fix maximum *interest* rates; that it has no authority to fix "the rate," or the absolute rate, even for interstate application; that it had no authority at all to fix any rate for intrastate application; but that the above quoted statement of principles shows that it assumed such power over intrastate rates and that such assumption had a material effect upon its decision to make the order in the terms in which it was made.

In this connection, also, it is shown that the Plaintiffs proposed a scale of rates for intrastate application for adoption by the Interstate Commerce Commission, and this scale as so proposed was substantially adopted by said Commission for such application, at least through indirection and through the proposed operation of Paragraphs "IX" and "X" of the order. This is shown in part by the following: On pages 93, et seq., of the Report it is recited that the Plaintiffs had filed and presented an application to the Railroad Commission of Texas for increased intrastate rates, supported by certain evidence with respect to station costs in Texas, etc.; on page 94 of the Report it is said "while all the evidence with reference to station costs was presented to the Texas commission, the carriers did not at that time propose a definite scale of rates based upon
53 these figures. This scale was proposed at the hearing before us in December, 1915, and met with considerable objection and criticism from some of the protestants, who asserted that the computations concerning these station costs were erroneous in certain particulars. It does not appear, however, that the errors pointed out in the computations lead to any serious errors in the results.

While we are not disposed to accept all the claims of the carriers with reference to these station costs, for the reason among others, that the computations made as to the freight stations examined may not represent the average station costs throughout the State of Texas, due consideration must be given to the data submitted. They are strongly indicative that the scale of rates known as the Shreveport Scale (Note:—i. e. the scale in 34 I. C. C. 472) is too low for short hauls in the territory to which it is intended to apply." It affirmatively appears from the Report that the evidence referred to in the excerpt quoted has no reference to station costs at Shreveport. On page 85 of the Thirtieth Annual Report of the Interstate Commerce Commission reference is made to the use of this evidence in the making of the order of July 7th, 1916, as to class rates and it is there

said that "the modifications (Note: i. e. in the scale in 34 I. C. C. 472) so made (Note: i. e. by the order of July 7th, 1916) were principally with regard to rates for short distances and were largely due to the showing made respecting terminal expenses, as set forth in the report." Now the scale prescribed in 34 I. C. C. 472, contained class rates for distances of 20 miles and less as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates:										
(10 miles and less)	13	12	10	8	6	7	6	5	5	4
(12 and over 10)..	14	12	11	9	6	7	6	5	5	4
(15 and over 12)..	15	13	12	10	7	8	6	5	5	4
(18 and over 15)..	16	14	12	10	8	9	7	6	5	4
(21 and over 18)..	17	15	13	11	9	10	8	6	6	5

On page 93 of the Report it is said: "The carriers propose
54 that the Shreveport scale (just mentioned) be modified by making the minimum rates which would be applicable for distances of 10 miles or less as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Cents	24	22	18	16";						

the rates attempted to be authorized by the order of July 7th, 1916, for these short distances are:

Class:	1	2	3	4	5	A	B	C	D	E
Rates:										
(10 miles and less)	23	19	16	14	10	10	8	7	6	5
(20 and over 10)..	27	22	19	16	12	13	10	9	8	6

As already shown, on account of geographical location, none of the above mentioned short distance rates could, under any circumstances, be applied on any shipment between Shreveport, Louisiana, and any point in Texas. Nor did any party to the proceedings, except the Plaintiffs, complain that the rates prescribed in 34 I. C. C. 472, were too low.

On page 99 of the Report, the Interstate Commerce Commission said:

"The rates proposed by the carriers for application in Texas and between Shreveport and Texas points correspond closely with the rates on cotton seed hulls from Oklahoma points to points in Texas, discussed in 'Cotton-Seed to Texas, 25 I. C. C. 237.' The rates on this commodity attempted to be authorized by the order of July 7th, 1916, correspond very closely, if not identically, with those proposed by the carriers for 'application in Texas.'"

It is further shown that the Missouri, Kansas & Texas Railway Company, and its receiver, filed an Answer in cause No. 3418 (a true copy of which Answer is now on file in this Court with the papers in Equity No. 295, certified as being a true copy by the Sec-

retary of the Interstate Commerce Commission, and to which reference is here made) and therein alleged that the intrastate rates were "Unjustly and unreasonably low," etc., and prayed that said
55 Commission make an order of such nature as to permit them to increase their rates "between points in Texas." Other of the Plaintiff carriers filed substantially like Answers.

And as shown by the Report, and especially by the portions referred to above, the Interstate Commerce Commission in substance granted these formal, as well as the informal, prayers of the Carriers for increased intrastate rates.

It is further shown that the Report and order affirmatively show that in very many substantial particulars and instances rates were attempted to be authorized which were materially higher than the interstate rates complained of as being already too high by the Railroad Commission of Louisiana.

For the foregoing and other reasons said order, and said portions thereof, are especially void as applicable to intrastate shipments between points on the lines of the Ft. Worth & Denver City Railway Company, Plaintiff herein, and all relief prayed in behalf of such Company should be denied even in the event relief should be granted to some or all of the other plaintiffs herein. And in this connection Defendants show unto the Court the following:

The Interstate Commerce Commission on pages 173 and 174 of its said Report made the following findings of fact with respect to the "condition" of the Fort Worth & Denver City Railway Company, to-wit:

Its lines "lie very largely in differential territory and on that account enjoys higher rates than the roads in eastern Texas";

"Although the net income before deducting interest during the years 1910 to 1915 has been diminishing, it has been sufficient in each year to meet all interest obligations and to permit a reasonable return upon the valuation of the property made by the road's engineers. We are not informed as to the thoroughness of this valuation or of that made by the Texas Commission, but for the last six years this road has been able to earn approximately 7 per cent an-
60 nually upon its capitalization"; "although the net revenues of this road appear to have been decreasing for six years, there is nothing in its present financial condition to indicate that its rates are not fairly remunerative."

Now these Defendants say that said Railway Company under the purported authority of said order of the Interstate Commerce Commission have published in said Tariff 2-B and are applying, and propose to continue to apply, to shipments in Intrastate movement between points on its lines, and between points on its lines and points on the lines of other carriers in Texas, both standard and differential rates much higher than those prescribed therefor by the Railroad Commission of Texas, and much higher than those which the Interstate Commerce Commission in the findings above quoted found to be just and reasonable and "fairly remunerative," which rates so applied are unreasonably high when measured by the findings of the

Interstate Commerce Commission quoted above. The Interstate Commerce Commission was without power to impose upon such intrastate commerce such unreasonable rates. Illustrative of this it is shown that prior to the making of said order and now the class rates prescribed by the Railroad Commission of Texas for movements on said line for distances of 10 miles and less were:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	13	12	10	8	6	7	6	5	5	4

(no differentials) while the rates now charged under such purported authority for such distances in differential territory are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	23	19	16	14	10	10	8	7	6	5,

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	2	2	1	1	1	1	1	1	1	1;

the class rates prescribed by the Railroad Commission of Texas for distances of 20 miles are as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	17	15	13	11	9	10	8	6	6	5,

(no differential), while those now charged by said road under such purported authority for said distance in differential territory are:

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Classes:	1	2	3	4	5	A	B	C	D	E
Rates	27	22	19	16	12	13	10	9	8	6,

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	2	2	1	1	1	1	1	1	1	1;

the class rates prescribed by the Railroad Commission of Texas for distances of 50 miles are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	27	25	23	21	18	19	16	13	11	8,

(no differential), while those now charged for said distance under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	37	31	28	22	18	19	15	13	11	9,

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	5	4	3	2	1	2	1	1	1	1;

the class rates prescribed for distances of 100 miles by the Railroad Commission of Texas are as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	44	41	38	35	26	27	24	21	16	13,

(no differentials), while those now charged by said road under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	53	45	37	32	27	28	21	19	16	13,

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	10	9	8	7	6	7	5	4	3	3,

the class rates prescribed by the Railroad Commission of Texas for distances of 200 miles are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	70	65	58	56	39	40	37	31	22	17,

(no differentials), while those now charged by said road for such distances in differential territory under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	80	68	56	48	40	42	32	28	24	20,

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	20	10	18	17	11	12	10	9	8	7;

the rates prescribed by the Railroad Commission of Texas for distances of 250 miles between points on said road are:

58

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	80	72	60	58	44	46	40	34	23	17,

no differentials, while the rates charged on such movements in differential territory by said road under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	90	77	63	54	45	47	36	32	27	22,

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	25	23	21	20	14	15	13	12	11	10.

Similar illustrations apply to rates prescribed by the Railroad Commission for the movement of various commodities and the rates now charged thereon in differential territory by said road under such purported authority.

(6) Said portions of the order as applicable to shipments between points on the line of the Ft. Worth & Denver City Railway Company in differential territory produce unjust and unlawful discriminations against intra-State traffic between such points and against the cities and towns and shippers located and doing business at such points. Illustrative of this, these Defendants show unto the Court the following: That no shipment between Shreveport, La., and any point on said lines can be made, on account of physical location, unless the same shall travel at least 223 miles, and no shipment between Shreveport, La., and any point on said lines in differential territory can be made unless the same shall travel more than 400 miles, and no shipment can be made between Shreveport, La., and any point in Texas unless the same shall travel more than 20 miles; that the rates prescribed by the Railroad Commission of Texas,—part of which are shown above,—applicable to shipments between points on said lines were, by the Interstate Commerce Commission, found to be "Fairly Remunerative," and just and reasonably high. Notwithstanding the premises, however, said portions of said order, as construed by the Plaintiffs, undertake to authorize and prescribe rates for application to intra-State movements between points on said lines in differential territory, for distances of twenty miles, and for other dis-
59 tances, much higher than those found to be reasonable and much higher than those authorized for application to shipments between Shreveport and all Texas points for all distances of less than 400 miles.

(7) Said portions of said order, as so construed by the Plaintiffs, undertake to authorize and require like unjust and unlawful discriminations against all cities and towns and shippers in differential territory, and against all shipments between points within such territory.

(8) By reason of each and all of the premises, it plainly results from the order itself and the Report accompanying it that the order, and the portions thereof specifically mentioned, was based upon the assumption by the Interstate Commerce Commission of powers not conferred by law, and even though the order may be couched in such form to appear, when superficially considered, to involve but the exercise of an authority vested in the Commission the form given it does not give it validity, and does not relieve the Court from the duty of correcting the abuse of the power assumed or sought to be exercised or from the duty of refusing to enforce or give effect thereto.

(9) Even though the power exercised in the order, and the portions thereof specifically mentioned, was vested in the Interstate Com-

merce Commission, it plainly appears from said order and the Report accompanying the same, and from the inevitable results thereof, that such power has been exercised in such an unreasonable and arbitrary manner as to bring it within the rule that the substance and not the shadow determines the validity of the exercise of the power, and the substance and inevitable result of the order, and such portions thereof, renders the attempted exercise of the power void, and the same should not be enforced or given effect, but should be set aside in whole and in part.

60 Wherefore, for such and all of the reasons and premises above set forth, these Defendants pray that all relief prayed for by Plaintiffs be denied, and that said Supplemental Bill of Complaint be dismissed for lack of equity, and that said order and such portions of the same be set aside.

——— ———,
Attorney General of Texas.

(Signed) LUTHER NICKELS,
Assistant Attorney General of Texas.

STATE OF TEXAS,
County of Travis:

I, Luther Nickels, do solemnly swear that the matters of fact set forth in the foregoing Answer are true and correct, and that I have good reason to believe and do believe that the matters of conclusions there set forth are true.

(Signed) LUTHER NICKELS.

Subscribed and sworn to before me this the 8th day of August, 1917.

(Signed) L. C. SUTTON,
[SEAL.] *Notary Public, Travis County, Texas.*

Endorsed: Equity No. 295. In the District Court of the United States for the Western District of Texas, Austin Division. Eastern Texas Railroad Company, et al., Plaintiffs, vs. Railroad Commission of Texas, et al., Defendants. Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint. Filed Aug. 9, 1917, D. H. Hart, Clerk, by A. B. Coffee, Deputy.

61 *Trial Amendment.*

Filed Sept. 21, 1917.

In the District Court of the United States for the Western District of Texas, Austin, Texas.

Equity, 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

And now on September 21, 1917, Defendants B. F. Looney and Luther Nickels, by leave of the Court, amend their "Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint" by adding thereto the following paragraphs, to-wit:

XIII.

By reason of each and all of the premises, these Defendants pray that the order hereto entered in Equity Cause No. 295, granting Plaintiffs and Interveners therein an interlocutory injunction be vacated and set aside in whole:

In the alternative they pray that said order be modified to the extent necessary for the granting of all relief prayed for by these Defendants in their "Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint," and prayed for in this amendment thereto.

XIV.

These Defendants pray that, by reason of each and all of the premises, this Court now enter its order restraining the Plaintiffs and each of them from further applying or charging the Differential Rates now charged by them, or any Differential Rates in excess of those prescribed therefor by the Railroad Commission of Texas and under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of 351 miles or less, pending the final hearing of Equity No. 295 or the further orders of this Court.

62 In the alternative they pray that this Court now enter its order restraining the Plaintiffs from charging the Differential Rates now charged by them, or any Differential Rates in excess of the Differential Rates prescribed therefor by the Railroad Commission of Texas, and under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of twenty miles or less, pending the final hearing of Equity No. 295 or the further orders of the Court.

XV.

These Defendants pray that this Court now enter its order suspending the operation of the Order of the Interstate Commerce Commission of date July 7, 1916, in whole, pending the final hearing of Equity No. 295 or the further orders of the Court.

In the alternative they pray that this Court now enter its order suspending said order in whole with respect to intrastate rates pending the final hearing of Equity No. 295 or the further orders of the Court.

Further, in the alternative, they pray that this Court now enter its order suspending said order of the Interstate Commerce Commission with respect to the application of Differential Rates on intrastate shipments moving for distances of 351 miles or less pending the final hearing of Equity No. 295 or the further orders of the Court, and suspending such orders in other respects where the premises and the evidence may show the same to be invalid.

(Signed) B. F. LOONEY,
Attorney General of Texas;
LUTHER NICKELS,
Assistant Attorney General of Texas,
Defendants, pro se.

Endorsed: Equity 295. In the District Court of the United States for the Western District of Texas at Austin, Texas. Eastern Texas Railroad Co. et al., Plaintiffs vs. Railroad Commission of Texas, et al., Defendants. Trial Amendment. Filed Sept. 21, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

63 *Order of Court on Motion of Defendant Railroad Commission of Texas for Leave to File Trial Amendment.*

Filed September 21, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et als., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et als., Defendants.

September 21, 1917.

On this day came on to be heard the request of the defendants B. F. Looney and Luther Nickels for leave to file a trial amendment, a copy of which was submitted to the Court and the Court, after considering the same, is of opinion that only that portion of said

supplemental answer as contained in the numbered paragraph XIV is pertinent to be considered on this hearing, but that said Paragraph XIV may be pertinent so far as the construction and meaning of the order of the Interstate Commerce Commission of July 7th, 1916 is concerned, and for that purpose may be considered by the Court.

It is therefore ordered that said supplemental answer, subject to the foregoing limitations, may be filed.

To which action of the Court in limiting said Answer defendants duly excepted and plaintiffs excepted to the filing or any consideration of said amendment upon the ground that same was a departure from subject matter of the original suit and involved an attempt to set aside in whole or in part the order of the Interstate Commerce Commission, which could not be done without making the United States a party to this proceeding and serving notice upon Attorney General.

(Signed) W. R. SMITH, *Judge.*

Endorsed: No. 295. In Equity. United States District Court, Western District of Texas, Austin Division. Eastern Texas Railroad Co., et al., vs. Railroad Commission of Texas, et al. Order of Court on motion of Defendant Railroad Commission of Texas for leave to file Trial Amendment. Filed and entered September 21, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy. Eq. Journal "E" page 112.

64 *Order Granting Injunction.*

Filed September 22, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

v.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

On this 20th day of September, 1917, came on to be heard the Second Supplemental Bill of Complaint by carriers, plaintiffs and intervenors, in the above entitled case, seeking to enjoin defendants B. F. Looney, Attorney General of the State of Texas, and Luther Nickels, Assistant Attorney General of the State of Texas, and associates and all other persons from the prosecution of suit No. 34832 in the District Court of Travis County, Texas, and from instituting or prosecuting any similar suit in said Court or any other Court other than the United States District Court for the Western District of Texas, and from in any way or manner whatever attempting to interfere or prevent plaintiffs in the said Second Supplemental

Bill of Complaint from charging the rates prescribed in Texas Lines' Tariff 2-B and supplements thereto, and all parties, plaintiff and defendant, appeared and announced ready and it appearing to the Court that the said suit No. 34832, styled State of Texas v. Abilene & Southern Railway Company, et al., was filed in the District Court of Travis County, for the 53rd Judicial District on July 20, A. D. 1917; that heretofore, to-wit, said Supplemental Bill of Complaint herein was ordered to be filed on August 4, 1917, by R. L. Batts, Circuit Judge for the 5th Circuit, the Hon. Duval West, District Judge for the Western District of Texas being disqualified, and the Hon. W. R. Smith, District Judge of the United States for the Western District being absent from said District, and the said Second Supplemental Bill with prayers therein for injunction was
65 set down for hearing before said Circuit Judge R. L. Batts on August 9, 1917. That upon said date Defendants B. F. Looney and Luther Nickels, by answer filed, suggested that the proper disposition of the matters embraced in said Second Supplemental Bill of Complaint demanded the presence and hearing of the same before three Federal Judges, under and by virtue of the terms of Section 266 of the Judicial Code of 1911. That thereupon the said R. L. Batts, Circuit Judge, called to his assistance Judge Gordon Russell, United States Judge for the Eastern District of Texas and Judge W. R. Smith, District Judge for the Western District of Texas, and set the cause for hearing at Austin before said special court September 20, 1917, and said special court having duly convened at said time and place and the court having heard the pleadings of parties and evidence produced and arguments of counsel, is of opinion that the law is with plaintiffs.

Whereupon, it is Ordered, Adjudged and Decreed by the Court that the prayer for injunction as in said Second Supplemental Bill of Complaint prayed for be and the same is hereby granted and it is ordered and decreed by the Court that the Defendants B. F. Looney, Attorney General of the State of Texas and Luther Nickels, Assistant Attorney General of the State of Texas, their associates and all other persons, be and they are hereby restrained and enjoined from prosecuting said suit No. 34832 in the District Court of Travis County, Texas, and from instituting or prosecuting any similar suit in said Court or any other Court than the United States District Court for the Western District of Texas, and from in any way or manner whatsoever attempting to interfere or prevent plaintiffs in said Second Supplemental Bill of Complaint herein from charging the rates prescribed in Texas Lines' Tariff 2-B and supplements thereto.

It is further ordered by the Court that all prayers for affirmative relief by said defendants herein be and the same are hereby
66 denied.

And thereupon came on to be heard the application of defendants B. F. Looney and Luther Nickels for an appeal from the decree herein rendered, to the Supreme Court of the United States, and the same is allowed in open Court, and bond for such appeal is fixed at the sum of one thousand dollars, conditioned and

secured as required by law, without supersedeas, to be approved by the Clerk of the District Court for the Western District of Texas.

This 22nd day of September, A. D. 1917.

(Signed) R. L. BATTS,
Circuit Judge.
GORDON RUSSELL,
U. S. Judge for the Eastern District of Texas.
W. R. SMITH,
U. S. Judge for the Western District of Texas.

O. K.
B. F. LOONEY.
LUTHER NICKELS.

Endorsed: United States District Court, Western District of Texas, Austin Division. Eastern Texas Railroad Company, et al., vs. Railroad Commission of Texas, et al. Order granting Injunction. Filed September 22, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy. Recorded September 22, 1917. Equity Journal, Vol. E, page 113.

Order Directing the Filing of Second Supplemental Bill of Complaint.

Filed Aug. 4, 1917.

In Chambers.

Austin, Texas, August 4, 1917.

The foregoing supplemental bill of complaint having been presented to the undersigned on this date, and the defendants, the Honorable B. F. Looney and the Honorable Luther Nickels, having entered their appearance herein, it is ordered that the Clerk file the bill of complaint, and that the same be set for hearing before the undersigned on the prayer for temporary injunction at 10 o'clock A. M. Thursday, August 9, 1917, in chambers at Austin, it having been made to appear that the Honorable Duval West, District Judge of the United States for the Western District of Texas, is disqualified in this cause, and that the Honorable W. R. Smith, also District Judge of the United States for the Western District of Texas, is absent from said district and from the State of Texas.

(Signed) R. L. BATTS,
U. S. Circuit Judge.

No endorsements. This order being attached to and under the same cover as the Second Supplemental Bill of Complaint.

67 *Order Postponing Hearing on Prayer for Injunction.*

Filed August 9, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Upon agreement between the complainants in the second supplemental bill of complaint filed herein on August 4th, 1917, and R. F. Looney, Attorney General of Texas, and Luther Nickels, Assistant Attorney General, the application for injunction prayed for in said supplemental bill is postponed for hearing until the 20th day of September, 1917, at 10 o'clock a. m., at which time the Circuit Judge, Hon. R. L. Batts, to whom said supplemental bill has been presented, will call to his assistance two other Judges to sit in such hearing.

As an incident of the making of this order, it is agreed by R. F. Looney, Attorney General, and his Assistant, Mr. Nickels, that the case of the State of Texas vs. the Abilene Southern Railway Company et al., in the District Court of Travis County, Texas, No. 34832, will be postponed without any action being taken therein until after the hearing of the application of complainants in said second supplemental bill for injunction has been heard and disposed of, and that until such time the defendants in the case in said State District Court need not enter an appearance or file any answer or other paper. Let this be entered.

(Signed) R. L. BATTS,
U. S. Circuit Judge.

O. K.
J. W. TERRY,
H. GLASS, & OTHERS,
For Complainants.
R. F. LOONEY,
Atty. Gen.
LUTHER NICKELS,
Asst. Atty. Gen.

Endorsed: United States District Court, Western District of Texas, Austin Division. No. 295, Equity. Eastern Texas Railroad Co., et al., vs. Railroad Commission of Texas, et al. Order postponing hearing on prayer for injunction in Second Supplemental Bill of

Complaint. Filed and entered August 9, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy. Equity Order Book Vol. 3, p. 88.

68 *Order Granting Temporary Injunction (Attached to Original Bill.)*

Filed Sept. 4, 1916.

The foregoing application for a temporary injunction and temporary restraining order to remain in force until the hearing of the said application for a temporary injunction can be heard and determined, was presented to me this 2nd day of September, A. D. 1916, and it was shown that the Honorable T. S. Maxey, United States District Judge for the Western District of Texas, is absent from said District, and for that reason is unable to hear and act upon said application; and having read and considered the foregoing bill, it is ordered that the same be filed and that the application for a hearing for a temporary injunction is granted and such hearing is set down for September 28, 1916, at my chambers in the City of Atlanta, Georgia, at 10 o'clock A. M. That immediate notice of said hearing, of not less than five days shall be given to the Governor and the Attorney General of Texas and to the defendants. And I hereby call to my assistance at said hearing of said application the Honorable Richard W. Walker, Circuit Judge of this Circuit, and the Honorable William T. Newman, District Judge of the Northern District of Georgia.

It being further shown, and it is my opinion, that irreparable loss and damage will result to complainants unless a temporary restraining order is granted, it is ordered that such temporary restraining order is granted, and the Clerk of the District Court for the Western District of Texas is ordered and directed to issue a temporary restraining order as prayed for restraining the Railroad Commission of Texas, the Attorney General and other defendants, and others with notice, from filing and prosecuting suits against the plaintiffs or either of them for failure or refusal to put in effect Circular No. 5060 of the Railroad Commission of Texas dated August 28, 1916, until such time as the application for temporary injunction can be heard and determined, and the said temporary restraining order issued

69 by said Clerk shall restrain and prevent the Railroad Commission of Texas, the Attorney General of Texas and the other defendants hereto, and others with notice, from filing and prosecuting suits against the plaintiffs or either of them for damages or penalties, for charging by them, on and after November 1st, 1916, the rates prescribed and authorized by the Interstate Commerce Commission in its order of July 7, 1916, on shipments moving between points in the State of Texas, and such temporary restraining order as prayed for to remain in force until the hearing and determination of the application for an interlocutory or temporary injunction upon notice as aforesaid. This September 2, A. D. 1916 at Atlanta Georgia.

(Signed) DON A. PARDEE,
U. S. Circuit Judge.

Order Postponing Hearing for Temporary Injunction.

Filed September 27, 1916.

In the District Court of the United States for the Western District of Texas, Austin Division.

Eq. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

v.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

The hearing for temporary injunction, prayed for by plaintiffs in the above cause, having been set down for September 28th, 1916 at Atlanta, Georgia, is, upon request of the Defendants, Railroad Commission of Texas and the Attorney General of Texas, concurred in by counsel for complainants, postponed to and will be heard in Fort Worth, Texas, on the 8th day of November, 1916.

The postponement is without prejudice to Defendants' pleas of privilege, venue, jurisdiction or other dilatory pleas.

The temporary restraining order issued by me on September 2nd, 1916, is continued in force until such time as the prayer for temporary injunction can be heard and determined.

This September 25th, A. D. 1916, at Atlanta, Georgia.

(Signed) DON A. PARDEE, *Judge.*

70 *Order Postponing Hearing for Temporary Injunction.*

Filed November 7, 1916.

Eq. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al.

v.

RAILROAD COMMISSION OF TEXAS et al.

The application for a temporary injunction in the above cause has been set down for hearing at Fort Worth, Texas, on November 8, 1916, before the undersigned United States Judges, two of whom are Circuit Judges.

The Railroad Commission of Texas and the Hon. B. F. Looney, Attorney General of Texas, have asked for a postponement of said hearing until after the Interstate Commerce Commission shall have heard and acted upon the various petitions to reopen for further hearing and argument the case of Railroad Commission of Louisiana v.

Aransas Harbor Terminal Railway Company, et al., which has been set down for hearing December 6, 1916.

It is ordered that the hearing for temporary injunction be postponed until some date subsequent to December 6, 1916, to be determined and designated by the Hon. Don A. Pardee, Presiding Judge. Place of hearing to be designated by Judge Pardee.

It is further ordered that the temporary restraining order granted by the said Hon. Don A. Pardee on September 2, 1916, be continued in full force and effect until the hearing and determination of said application for a temporary injunction.

The above is concurred in and agreed to by plaintiffs and above named defendants.

Forth Worth, Texas, November 6, A. D. 1916.

(Signed) DON A. PARDEE,
Circuit Judge.
R. W. WALKER,
Circuit Judge.

O. K.
LOONEY,
Atty. Gen.

71 *Order Setting Hearing on Injunction Pendente Lite.*

Filed March 3, 1917.

United States District Court for the Western District of Texas.

EASTERN TEXAS RAILROAD COMPANY et al.

v.

RAILROAD COMMISSION OF TEXAS et al.

In this case on application for a restraining order and an injunction pendente lite, presented to the undersigned Circuit Judge, an order was heretofore made granting the restraining order and setting the case for hearing upon the application for an injunction pendente lite. Pending such hearing on application and by consent of both parties, the hearing on the motion for injunction pendente lite was continued indefinitely, to be reset for any day after December 6th, 1916, as the undersigned should determine.

Now, on an application of both parties that the case should be set for hearing on the said application for an injunction pendente lite, it is ordered the same be fixed for Wednesday, April 4th, 1917, at ten o'clock A. M., in my chambers in the City of New Orleans, State of Louisiana.

The Clerk will enter this order and notify parties, and in due time transmit to the undersigned full record in the case.

Witness my hand this 28th day of February, A. D. 1917.

(Signed) DON A. PARDEE,
Circuit Judge.

Order of Continuance.

Filed June 12, 1917.

United States District Court, Western District of Texas, Austin Division.

No. 295. Equity.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Upon the motion of the plaintiffs, it is ordered by the Court that this cause be and the same is hereby continued to the January term of this Court, A. D. 1918.

Ordered in open Court this the 12th day of June, A. D. 1917.

(Signed) W. R. SMITH,
United States District Judge.

71p *Opinion of Judge Pardee.*

Filed April 21, 1917.

In the District Court of the United States, Western District of Texas, Austin Division.

In Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al.

vs.

RAILROAD COMMISSION OF TEXAS et al.

On Motion for Temporary Injunction.

Before Pardee, Walker, and Batts, Circuit Judges.

PARDEE, *Circuit Judge:*

This suit grows out of an order of the Interstate Commerce Commission of July 7th, 1916, made and entered in five consolidated cases entitled: The Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway Company et al., docket No. 8418; The Railway Commission of Louisiana v. The St. Louis, Southwestern Railway Company et al., docket No. 3918; The Railroad Commission of Louisiana v. St. Louis, San Francisco & Texas Railway Company, docket No. 8290; Eastern Class Rates Investigation and Su-

pension docket No. 710; and Class Rates to Shreveport, Louisiana, Investigation and Suspension docket No. 729.

The order in question is very lengthy and not necessary to give in full. A large part of the order relates to the discrimination then practiced between Shreveport, Louisiana, and all points in Texas, and provides for discontinuance of this discrimination and elaborately provides for maximum rates between Shreveport and all points in Texas; and orders defendants to establish on or before November 1st, 1916, on notice to the Interstate Commerce Commission and the general public by not less than thirty days of filing, rates in accordance with the orders of the Commission.

The 10th, 11th and 12th paragraphs of the order are particularly pertinent to this hearing. They are as follows:

73p "X. It is further ordered, That said defendants be, and they are hereby notified and required to establish, on or before November 1, 1916, upon like notice, and thereafter to maintain and apply to the transportation of property between Shreveport, La., and points in the State of Texas, class rates and rates on the above-named commodities not in excess of those contemporaneously applied by them for the transportation of like property for like distances between points in the State of Texas, except in those instances in which the rates between Texas points have been depressed by reason of water competition along the Gulf of Mexico or waters contiguous thereto.

XI. It is further ordered, That said defendants be, and they are hereby, notified and required to cease and desist, on or before November 1, 1916, and thereafter to abstain, from maintaining and applying to the transportation of property between points in Texas the classification provisions at present maintained and applied to such transportation.

XII. It is further ordered, That said defendants be, and they are hereby, notified and required to establish on or before November 1, 1916, upon like notice, and thereafter to maintain and apply to the transportation of property between points in Texas, the provisions of the current western classifications in effect at the time such traffic moves."

Preparatory to filing tariffs in compliance with the Commission's order of July 7, 1916, the carriers representing 80% of the railroad mileage in the State of Texas and affected by the order of July 7, 1916, filed their bill in this court on September 4th, 1916, for an injunction, joining as parties defendant the Railroad Commission of Texas together with its individual members, the Attorney General of the State of Texas, and certain Texas shippers, reciting the proceedings before the Interstate Commerce Commission and the necessity they were under to comply, and their intention to comply, with the order of said Commission; and then alleging in substance that the tariffs to be filed in accordance with the order of the Interstate Commerce Commission would necessarily conflict with the tariffs heretofore established by the Railroad Commission of Texas which

under the laws of Texas they were compelled to observe and comply with under heavy penalties, at the suit of the Attorney General of Texas or of individual shippers that the defendants were claiming that the order of the Interstate Commerce Commission of July 7, 1916, was void and were threatening to institute suits for
73p damages and penalties under the Texas laws should the carriers comply with the said order of the Interstate Commerce Commission; and the complainants prayed for a temporary restraining order, an injunction pendente lite, and a perpetual injunction.

To this bill is attached the following order:

"The foregoing application for a temporary injunction and temporary restraining order to remain in force until the hearing of the said application for a temporary injunction can be heard and determined, was presented to me this 2nd day of September, A. D. 1916, and it was shown that the Honorable T. S. Maxey, United States District Judge for the Western District of Texas, is absent from said District, and for that reason is unable to hear and act upon said application; and having read and considered the foregoing bill, it is ordered that the same be filed and that the application for a hearing for a temporary injunction is granted and such hearing is set down for September 28, 1916, at my chambers in the City of Atlanta, Georgia, at 10 o'clock A. M. That immediate notice, of said hearing, of not less than five days shall be given to the Governor and the Attorney General of Texas and to the defendants. And I hereby call to my assistance at said hearing of said application the Honorable Richard W. Walker, Circuit Judge of this Circuit, and the Honorable William T. Newman, District Judge of the Northern District of Georgia.

It being further shown, and it is my opinion, that irreparable loss and damage will result to complainants unless a temporary restraining order is granted, it is ordered that such temporary restraining order is granted, and the Clerk of the District Court for the Western District of Texas is ordered and directed to issue a temporary restraining order as prayed for restraining the Railroad Commission of Texas, the Attorney General and others with notice, from filing and prosecuting suits against the plaintiffs or either of them for failure or refusal to put in effect Circular No. 5060 of the Railroad Commission of Texas dated August 28, 1916, until such time as the application for temporary injunction can be heard and determined, and the said temporary restraining order issued by said Clerk shall restrain and prevent the Railroad Commission of Texas, the Attorney General of Texas and the other defendants hereto, and others with notice, from filing and prosecuting suits against the plaintiffs or either of them for damages or penalties, or for charging by them on and after November 1st, 1916, the rates prescribed and authorized by the Interstate Commerce Commission in its order of July 7, 1916, on shipments moving between points in the State of Texas, and such temporary restraining order as prayed for to remain in force until

the hearing and determination of the application for an interlocutory or temporary injunction upon notice as aforesaid.

This September 2, A. D. 1916, at Atlanta, Georgia.

DON A. PARDEE,
U. S. Circuit Judge.

The hearing on the question of an injunction pending the suit was postponed by consent from time to time until April 4th, 1917, in New Orleans, La., when the matter came on for hearing before Pardee, Circuit Judge, who issued the order to show cause,
74p and Walker and Batts, Circuit Judges called to assist under provisions of Section 266 of the Judicial Code.

Upon this hearing a large amount of evidence was introduced on both sides consisting of subsequent pleadings in the case, affidavits, proceedings before the Interstate Commerce Commission, all as shown by the process verbal hereto attached. The pleadings subsequent to the entry of the temporary restraining order herein are an amendment to the original bill, a supplemental bill by the complainant showing that the tariffs and rates had been filed under the order of the Interstate Commerce Commission and were in force, a very lengthy and argumentative answer by the Railroad Commission of Texas and the Attorney General of Texas, substantially denying all the allegations of the original bill and contending that the order of the Interstate Commerce Commission of July 7, 1916, was void and, if not void, void in whole or in part; and further answering in the nature of a cross-action, contending and asserting that the order of July 7, 1916, was void, and that the United States and the Interstate Commerce Commission are necessary parties; and ended with the prayer that the plaintiffs be denied all relief herein and defendants have judgment and costs; and, further, on the final hearing, said order of the Interstate Commerce Commission be annulled and wholly set aside.

To this answer the complainants filed a general and special replication, and said answer having been served upon the United States and the Interstate Commerce Commission, each made a limited appearance by attorneys contesting the jurisdiction as against them.

It further appeared that twenty-eight other railroads, wholly situated in the State of Texas and not originally parties to the suit, filed their petition of intervention, joining the complainants in the original bill and adopting the allegations and prayers therein, and further showing that they had filed tariffs under the order of July 7, 1916; and further alleging that on the 14th day of October, 1916, the State of Texas, acting through her Attorney General, filed a suit in the District Court of Travis County, State of Texas, against
75p these interveners and other Railway Companies wherein the State of Texas sought to enjoin the defendants from charging on and after November 1st, 1916, higher rates than those prescribed by the Railroad Commission of Texas and from using any classification other than those prescribed by the Railroad Commission of the State of Texas; that they therein appeared and pleaded, setting

up the proceedings before the Interstate Commerce Commission the order of July 7, 1916, that they had filed with the Interstate Commerce Commission tariffs in compliance with the order of said Commission, the bill of complaint in this cause and the restraining order issued thereon and the filing of the answer of the Railroad Commission, &c.; that on the hearing of the application for a temporary injunction in said cause all of the facts alleged in said pleas to the jurisdiction were established by competent proof and were uncontradicted; and thereafter said Court entered an order undertaking to restrain these interveners from charging higher rates than the rates prescribed by the Railroad Commission of Texas and from using or applying to shippers between points in the State of Texas any classification other than the classification prescribed by the Railroad Commission of the State of Texas; and also granting a writ of mandamus &c.; and that an appeal was taken from the said orders which is now pending; and the interveners concluded with a prayer for a restraining order and injunction, &c.

It appears by the proof on this hearing that subsequent proceedings have been had and are now pending before the Interstate Commerce Commission in the said consolidated causes, and that on the 26th of January, 1917, pursuant to a petition filed by the Attorney General of Texas and by various localities and commercial interests of Texas the Commission entered a supplemental report and order in Railroad Commission of Louisiana v. Aransas Harbor Terminal & Railway Company et al., in which the proceedings in the five consolidated cases were re-opened and leave was granted to the Attorney General of Texas and the Railroad Commission of Texas to intervene in a supplementary order as follows:

76p "Upon consideration of various petitions filed in the above entitled proceeding asking that they be re-opened for further hearing and argument and of the oral argument had therein, it is ordered that these proceedings be and they are hereby re-opened for further hearing; and it is further ordered that pending such hearing or hearings and decisions thereon the order of July 7, 1916, herein shall remain in full force and effect."

From the foregoing, it clearly appears that the complainant carriers both in the original bill and in the intervention are in jeopardy. If they fully comply with the order of the Interstate Commerce Commission and put in force the tariffs authorized by that body they will be subject to a multiplicity of suits by the Railroad Commission of Texas and by shippers involving heavy and even confiscatory penalties. If, on the other hand, they do not comply with the order of the Interstate Commerce Commission but do comply with the orders made and tariffs prescribed by the Railroad Commission of Texas they will be subject to a multiplicity of suits with liability to be mulct in very large penalties.

It seems clear that they are entitled to the protection of the Court. Ex Parte Young, 209 U. S. 123; Wadley Southern Railroad v. Georgia, 235 U. S. 651.

We assume that the order of July 7, 1916, involved herein is valid; Houston & Texas Cen. Ry. v. United States, 234 U. S., 342, and the

validity thereof can only be attacked directly; and, whether it is properly in issue in this case and whether the Court has jurisdiction (see 38 Stat at L., p. 219,) can only be decided upon the trial thereof. It certainly cannot be attacked collaterally in any case.

The issues made herein in regard to certain specific rates published in tariff promulgated under order of July 7, 1916, and whether or not such rates are unreasonable or discriminatory or otherwise illegal are now pending before the Interstate Commerce Commission, the only body competent to originally pass upon the same. Certainly, at this time, we are not called upon to decide upon the merits of the case. On the hearing before this special tribunal it seems that we are not called upon to try or decide any of the questions presented upon the pleadings further than to determine if the bill itself as
77p amended presents a case for equitable relief. On this issue enough has been stated to show that the complainants are entitled to such relief, and we find on the facts proved that the protection of the complainants requires the issuance of a temporary injunction substantially as prayed. An- it is so ordered.

Equity. No. 295.

EASTERN TEXAS RAILROAD CO. et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Application by Plaintiffs for a Temporary Writ of Injunction.

Before Judges Pardee, Walker, and Batts, Sitting in Chambers.

Attorneys representing plaintiffs and intervening railroad companies:

Hiram Glass, H. M. Garwood, A. H. McKnight, and J. W. Terry.
Blackburn Easterline, representing the United States.
Jos. W. Folk, for Interstate Commerce Commission.
W. M. Barrow, Assistant Atty. Gen'l of Louisiana, representing Louisiana R. R. Commission.

Attorneys representing defendants and other Interveners:

C. M. Cureton and Luther Nickels, Assistant Attorneys General, for R. R. Com. of Texas.
S. H. Cowan and N. A. Stedman, for interveners Industrial Traffic League et al., and Ft. Worth Freight Bureau et al.
Paul Kayser, representing Houston Chamber of Commerce et al.

J. W. Terry, for plaintiffs, offers various affidavits and also exhibits that were filed in the original bill of complaint and sup-
78p plemental bill, and the affidavits that were filed with the petition of intervention; also parts of the records before the Inter-

state Commerce Commission, and the order of that Commission, and the tariffs and classifications that have been adopted under that order and the supplemental order. He offers the original bill as an affidavit, and all exhibits to same, including order of Interstate R. R. Commission, and all exhibits that have — filed with or attached to supplemental bill, including all orders of the Interstate Commerce Commission that have been made in this matter since the original bill was filed. Offers original petition of intervention of the Gulf & Western Texas R. R. Co. and others, with the affidavits as exhibits filed with that bill; and also offers the supplemental intervention of those railroad companies, with exhibits filed with it. Also asks leave to later file affidavit to the effect that tariffs have been filed with the Railroad Commission, and another affidavit attached to and identifying the Western Classification and the exceptions thereto. Also wishes to raise the question of jurisdiction, which, if sustained, will materially shorten the hearing of this case.

Mr. Luther Nickels for defendants, offers the record of evidence before the Interstate Commerce Commission, leading up to the making of the order, and affidavits based on the evidence, making a comparison and tending to show the effect of the order, as construed by the plaintiffs in this case, and attempted to be applied. Affidavits not now ready, but will be prepared and offered later. Also wants to offer what is styled Exhibit No. 4, which shows the land grants by the State of Texas to these railroads and others, pleaded as a contract, being a certificate from the Commissioner of the Land Office of Texas.

Mr. Terry objects to any evidence being received in this case that was not offered to the Interstate Commerce Commission. The only two courts that we know of that have passed on that question have held that in proceedings such as this, new evidence will not be received, that the order must depend on the record made before
79p the Interstate Commerce Commission. We shall lodge that objection now, so that it will be understood that we are not waiving it.

Mr. Cowan: It has been agreed that we may file an intervention on behalf of the Texas Industrial Traffic League, represented by Judge Stedman and myself. The Judge of the court to whom we may have applied was recused, Judge Russell's apointment ceased, and it was agreed that we might file the intervention without formal leave of the court, which will be asked at this term.

Mr. Terry: The agreement was that either side might file pleadings up to March 25th, and that an order might be obtained nunc pro tunc, permitting filing, and under that agreement we filed our supplemental bill and the Attorney General filed an amended answer, and we filed a replication to his answer. Judge Stedman and Judge Cowan filed interventions on the part of the Industrial Traffic League.

Judge Stedman: I will state that those papers now in your Honors' hands are answers to the supplemental bill. We have in addition to this some elaborate pleadings in the way of petitions of intervention that we desire to have stand as an answer under the equity practice.

We also have an answer in behalf of certain persons who were parties to the Interstate Commerce proceeding. Those have all been filed.

Judge Cowan: We will desire to offer in evidence, if it is to be offered by affidavits, certain affidavits respecting some of the facts in the case, the details of which I have stated to Judge Terry, but it has been difficult to prepare them, because the parties who make the affidavits are scattered over the state, and it has been practically impossible to get them together until we reached New Orleans. These affidavits are being prepared, and will be filed tomorrow, and copies will be furnished to the other side. We had an understanding with Judge Terry this morning, and I presume that it is agreeable to other counsel, that there may be considered in evidence by this Court the official statistical tables of the Railroad Commission of Texas, and those of the Railroad Commission of Louisiana and of the

80p Interstate Commerce Commission, and the Western Classification of Tariffs.

Judge Terry: You can offer them without having them certified.

Judge Cowan: Subject, of course, to objection for immateriality and inadmissibility, it being unnecessary to present them in any other form than the recognized printed tables. We will desire to offer objections to testimony which has been suggested to be offered in support of the application for a temporary injunction. I deemed that it was not necessary to arise at the time and make the objection, the trial being before the court, the objection would be heard as well now as at the time Judge Terry offered same, and if it — necessary for me to now formally object and state such objections, I will do so. Some of the objections go to the fundamental law of the case. One in particular I will mention, that is, that the findings of the Interstate Commerce Commission in this case are not admissible in evidence for the purpose of proving what the commission found in support of the application for injunction to enjoin state rates, because the order of the Railroad Commission does not fix the rates, except under certain circumstances railroads are not to charge higher rates to Shreveport than for like distances in Texas on like commodities; that it is beyond the jurisdiction of the Interstate Commerce Commission on its face, it being a commission established for the regulation of interstate commerce, the jurisdiction of the Commission to make the findings must be sustained. There are other objections following the same line, that they are not sufficient to prove the allegations of the bill. Further, that there are no sufficient pleadings to admit such testimony under the decision in the Minnesota Rate Case——

Judge Terry: This is a proceeding in chambers, and not in court— The question whether the rates of the Texas Commission are confiscatory and in violation of the rights of the railroad companies is not before this court at this time. This hearing is an application for a preliminary injunction, and we do not ask that any of

81p the rates of the Texas Commission be enjoined that are not involved.

Before proceeding with the argument, I would like to have the record show that the defendants offered in evidence the entire record

before the Interstate Commerce Commission, including all of the evidence. It was offered by Mr. Nickels, representing defendants, and I am not clear whether he offered the entire record. He says he intended to offer the entire record.

Mr. Nickels: I offered it with the limitation that it was offered only for the purpose of showing from our standpoint that there was no substantial evidence to justify the order.

Judge Cowan: We do not offer the entire record.

Judge Terry: The intervening railway companies and plaintiffs will offer the entire record, without any limitations; so that it will be in without any qualification.

Mr. Nickels: We shall desire to make specific objections to certain portions of the record as offered for all purposes, the grounds to be stated with respect to various portions of it.

Judge Terry: If the court receives the exhibit as to land grants, offered by Mr. Nickels, we wish to offer an affidavit by Mr. Maddox, showing what were the value of land certificates at the time the grant was made to the railroad companies.

Judge Terry then presented his argument.

(Court recessed till 2:30 p. m.)

On reconvening of court; Mr. Esterline, special counsel for the United States, addressed the court, and objected to the jurisdiction of the court over the subject matter and questions sought to be raised in the answer and cross bill of the Railroad Commission of Texas, claiming that the allegations of same attacking, directly or indirectly, the order of the Interstate Commerce Commission, are beyond the power and jurisdiction of this Court to hear, and prays that an order be entered accordingly; alleging that the United
82p States has not consented to be sued in this court.

(Court recessed till 10 o'clock Thursday, April 5th.)

Gov. Folk addressed the Court, representing the Interstate Commerce Commission.

Mr. Nickels, for Railroad Commission of Texas, addresses the Court.

Asked by Mr. Garwood whether the railroads will be prosecuted by his department, (Attorney General's Department of Texas) for violations of order 5060 of the Railroad Commission of Texas Mr. Nickels replies that they will not.

(Court recessed till 2:30 p. m. April 5th.)

Judge Hiram Glass, representing the plaintiffs, addressed the court, followed by Mr. Barrow, for the Railroad Commission of Louisiana.

(Court adjourned till 10 o'clock a. m. Apr. 6th.)

Mr. Nickels: I desire to file a written statement to the effect that no suits will be filed for violations of Texas Commission order

No. 5060. Will make no further assurances than this as to what suits will be filed by Attorney General's Department for violations by the railroads of orders of the Texas Commission. My written pleadings speak for themselves.

Judge N. A. Stedman, representing the Texas Industrial Traffic League, et al., interveners, addressed the Court; followed by Mr. Paul Kayser, representing interveners Houston Chamber of Commerce, et al.

Judge S. H. Cowan, also representing Texas Industrial League et al., interveners, then addressed the court.

(Court adjourned till 2:30 p. m.)

Judge C. M. Cureton, Assistant Atty. Gen'l of Texas addressed the court in behalf of R. R. Commission of Texas, being the concluding argument for defendants.

Judge H. M. Garwood, representing plaintiff railroad com-
83p panies, addressed the court. Was asked by Mr. Nickels to declare their position with reference to rates on livestock etc. in suspension under I. & S. docket No. 958, Judge Garwood replied that they were not before the court.

Judge Cowan asks that certain affidavits be filed and considered in evidence.

The Court: You may file them, and if found admissible we will consider them. The attorneys are allowed ten days in which to file briefs.

Opinion of Judge Batts.

Filed April 21, 1917.

In the United States District Court for the Western District of Texas, at Austin.

Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

On Motion for a Temporary Injunction.

Before Pardee, Walker and Batts, Circuit Judges.

BATTS, *Circuit Judge*, concurring:

In a proceeding initiated in 1911 by the Railroad Commission of Louisiana against the Houston East & West Texas Railroad Company, the Houston & Shreveport Railroad Company, and the Texas & Pacific Railway Company, the Interstate Commerce Commission

held that the named carriers maintained higher rates from Shreveport to points in Texas, than were in force from cities in Texas to such points under substantially similar conditions and circumstances, and that thereby unlawful and undue preference and advantage was given to the Texas cities, and undue and unlawful discrimination against Shreveport, Louisiana, was effected. To correct this discrimination the carriers were directed to desist from charging higher rates for the transportation of any commodity from Shreveport to Dallas and Houston, respectively, and intermediate points, than were contemporaneously charged by the carriers for
84p such commodities from Dallas and Houston toward Shreveport, for equal distances. This order was attacked in a suit instituted by the carriers in the Commerce Court. The order was sustained by that court, and an appeal was taken to the Supreme Court.

The Supreme Court held (234 U. S. p. 342) that (1) Congress has the power to regulate rates within the state for transportation carried on by instrumentalities of inter-state commerce, or where intra-state business would affect inter-state commerce. (2) Congress has not undertaken, directly or through the agency of the Interstate Commerce Commission, to make rates for the transportation of passengers or property wholly within one state, and not affecting inter-state traffic. (3) Where the observance by the carrier of the state made rate constitutes a violation of the provision of the Interstate Commerce Act prohibiting unreasonable and unjust discrimination, or undue preference or advantage, Congress has, with reference thereto, exercised its power. (4) Where unjust discrimination or undue and unreasonable preference or advantage is charged, it is a matter primarily for investigation and determination by the Interstate Commerce Commission. (5) Where the Interstate Commerce Commission has held that inter-state rates charged by carriers are reasonable, and that the observance by the carriers of state made rates, affecting the same locality, is an illegal discrimination, the carrier may comply with the order of the Interstate Commerce Commission by so adjusting the state rates as to remove the discrimination.

After the rendition in 1913 of the opinion by the Supreme Court of the United States, the order of the Interstate Commerce Commission was enlarged to affect the rates of all common carriers within Eastern Texas, and, subsequently, further enlarged to include the entire State. The order also fixed the interstate rates between Shreveport and Texas points, and required the use, with reference to Texas business, of the Western Classification,
85p in lieu of the classification prescribed by the Railroad Commission of Texas.

Being required under the order to adjust their intra-state rates to the Shreveport rates established by the Commission, the railroads prepared rate sheets and tariffs, which they claimed to be in conformity with the order, and filed them with the Commission.

Pending the determination of the proceedings before the Interstate Commerce Commission, hearings were held by the Railroad

Commission of Texas upon an application of the railroad companies for an increase of intra-state rates, and orders were issued by the Railroad Commission, making a number of increases, which were to have become effective September 1st, 1916. Upon the filing with the Interstate Commerce Commission of the rate sheets by the Texas railroad companies, the Texas Railroad Commission, without notice, canceled the orders increasing the Texas rates. Thereupon plaintiffs instituted suit in the Western District of Texas, setting up in detail the facts hereinbefore mentioned. The bill also averred that all rates, orders and classifications of the Railroad Commission of Texas were unreasonable and confiscatory. It was alleged that unless protection was given by injunction plaintiffs would be subjected to many suits for penalties by the State of Texas and by shippers, for obeying the orders of the Interstate Commerce Commission.

The District Judge not being accessible, application was made to Hon. Don A. Pardee, Circuit Judge, for the temporary injunction now under consideration. A restraining order was made and the application set down for a hearing. Delays resulted from the concurrent action of the parties, and the application is now submitted to Circuit Judge Pardee, and Circuit Judge Walker and the writer, whom he has called to his assistance, under the terms of the law.

In the meantime the action of the Railroad Commission of Texas, in undertaking to cancel its orders increasing rates, was abrogated by that body. Also in the meantime, upon applications made by the Attorney General and the Railroad Commission of Texas, the Interstate Commerce Commission has re-opened the case referred to and has made provisions for hearing additional testimony, refus-
86p ing, however, to suspend the rates established, pending final action.

The Attorney General and Railroad Commission of Texas have in this case answered, and have filed a cross-action, asking for the cancellation of the order of the Interstate Commerce Commission. To this cross-bill, the Interstate Commerce Commission and the United States have filed pleas to the jurisdiction.

In the submission of this application the parties have filed transcripts of the records in the several hearings before the Interstate Commerce Commission, of the hearing extending over many weeks before the Railroad Commission of Texas, and many affidavits. It would probably not be possible for all this testimony to be read in less than two or three months. The application may be disposed of without a delay which would be inconsistent with the purpose of the law to expedite cases of this character.

If the rates from Texas points to Shreveport are reasonable, and if the application of the rates made by the Railroad Commission of Texas to points within Texas constitutes unjust discrimination against Shreveport, the Texas made rates are invalid. Under the terms of the Interstate Commerce Commission Act, the railroads of Texas may be prosecuted for charging the Texas rates. This results entirely without reference to any action which may be taken or which may have been taken by the Interstate Commerce Commission.

The Texas railroads are entitled to protection against contemplated State action, which would result from their failure to violate the law.

The Interstate Commerce Commission has established the Texas-Shreveport rates. These rates must be regarded as reasonable until set aside in the manner provided by law. The Interstate Commerce Commission has declared that the use of the Texas rates will constitute a discrimination against Shreveport. This Commission is one of the agencies designated by the law for the purpose of primarily determining whether a discrimination exists.

The law evidently contemplates that when the Interstate Commerce Commission shall have made an order, it is ordinarily to be obeyed until that order is set aside in the manner indicated by law.

87*p* Whether this rule is universal in its application it is not necessary in this proceeding to determine. The Supreme Court has held that the Commission may determine what is a reasonable inter-state rate, and what rate must be charged on intra-state business to prevent a discrimination, when both rates are in use. But the authority of the Interstate Commerce Commission with reference to intra-state rates is purely incidental and remedial. The qualities of such an order are radically different from those of an order resulting from the exercise of the legislative function involved in rate-making. To hold that it may, under any circumstances, regulate a state rate, is to carry the rules of interpretation to the extreme limit, in view of the proviso in the first section of the Interstate Commerce Commission Act. It may be held that it has the power to make such orders affecting intra-state rates as are necessary to prevent discrimination; certainly, the authority will not go beyond the necessity. When the Interstate Commerce Commission acts with reference to such a matter, it makes, or should make, the same character of investigation and the same character of determination that would be made by a court if a carrier charging the intra-state and the inter-state rates were prosecuted for a violation of the Interstate Commerce Commission Act. Its action would be more nearly judicial than legislative. Whenever such an order is under consideration by a court, the court would have to determine whether the jurisdiction of the Interstate Commerce Commission had been exceeded; and it would doubtless decline to apply the same rules with reference to the conclusiveness of the action of the Interstate Commerce Commission that obtain when that body is, in the exercise of its established legislative authority, making rates. It would not permit the Interstate Commerce Commission to conclusively determine its jurisdiction by determining the fact of the discrimination upon which its jurisdiction would depend.

The order under investigation in this case is exceedingly comprehensive. It breaks down the intra-state rates of the State of Texas. These rates have not been held unreasonable. They are the result of many years of labor by an authorized rate-making body. They have, until the Interstate Commerce Commission acted, been acquiesced in by the railroads. Some of the rates which have been set aside

88p could not have had an appreciable effect on the commerce of Shreveport, or any interstate commerce. Affidavits on file in this Court indicate that, in some instances, the results of the order are disastrous to industries within the State. In other instances the effects are grotesque. No reason has been made to appear why it is necessary to supersede the Texas classifications in order to prevent discrimination.

But the order is. It may be that it has been improvidently made. It may be that parts of it are invalid. It may be that when this case is finally tried it will be set aside in whole or in part. But it is not possible for us to hold the order void. A part of it has already been passed upon by the Supreme Court of the United States, and has by that tribunal been declared valid.

The opinion of the Supreme Court is vigorously attacked. In capable, well considered opinions, the state courts of Texas and South Dakota have declined to follow the opinion until re-announced. It is the obligation of the state courts, as it is the duty of the Federal courts, to vigilantly maintain the rights of the states, and to carefully determine the authority of Federal agencies exercising powers claimed to be in derogation of those rights. It is not surprising that state courts should be reluctant to follow an opinion which adds vastly to the power heretofore assumed to be in the Interstate Commerce Commission, and which destroys the power which has been assumed to be in the state-rate making bodies.

In the Minnesota Rate Case (230 U. S., 352) there is unequivocal recognition of the rights of the states to make intra-state rates. In the Shreveport Case (234 U. S., p. 358) the right of the Interstate Commerce Commission to enter an order affecting intra-state rates "where inter-state commerce itself is involved," is as definitely expressed. In the oral submission of this case the representatives of the Interstate Commerce Commission suggested the intimate relationship between all intra-state and all interstate business, and made it easy to see how the Commission would supersede the state rates in every state, as it had in Texas, and nullify the congressional declaration that the provisions of the act which created the Com-

89p mission "shall not apply to the transportation of passengers or property wholly within one state."

That Congress could make all railroad rates, or delegate the making to a commission, is not, under the authorities, seriously to be questioned. That it has not exercised this power is made clear by the Minnesota Rate Case; that it has given authority to the Interstate Commerce Commission which indirectly and awkwardly accomplishes the same result, would seem to be the Commission's interpretation of the Shreveport Case. But even if the Commission's application of the opinion is too broad, the language of the Supreme Court justifies a part, at least, of the order, and warrants and requires the protection we give the railroad companies.

It has been made to reasonably appear that but for the restraining order heretofore made, the railroads of Texas would have been subjected to numerous and destructive suits for penalties, for the

collection of overcharges, and for infractions of the Texas Railroad Commission law. But for this judicial action, their obedience to the order of the Interstate Commerce Commission would have been destructive of their property rights. If they had not obeyed the Interstate Commerce Commission's order they would have been subjected to the danger of suits and prosecutions by the United States government. Those conditions continue, and would seem to peculiarly demand the interference of the judiciary. It may be the issuing of the injunction will not be without injury to individual shippers, and to localities and industries. It is much to be regretted that all of the unfortunate consequences of conflicting laws cannot be avoided. The issuance of the injunction which is to be entered herein will, it is hoped, be the action least productive of disastrous effects.

The granting of the injunction prayed for by the railroads necessarily carries with it the refusal to grant a temporary injunction to the defendants. A serious question exists as to whether or not their cross-bill can be entertained in this suit. It is an attack upon an order of the Interstate Commerce Commission, and the law provides that it shall be instituted in the district court of the
90*p* residence of the party at whose instance the order was made.

It may be that, under the facts of this case, jurisdiction would lie only in the Western District of Louisiana. In addition to fixing the venue of suits of this kind, the law contemplates that the order setting aside the action of the Interstate Commerce Commission should be determined by a court of three judges.

It is certainly not contemplated that, in passing upon an application for a temporary injunction, the merits of a case which would require weeks for a proper trial, and the merits of a cross-bill which would require as long a time for disposition, should be considered and determined. The purpose of a temporary injunction is to protect rights, as far as possible, during the period necessary for the proper disposition of the case. Sometimes such an injunction necessarily involves the merits of a case. We have not considered it necessary or desirable that present adjudication of the matters involved in this case should be undertaken. In addition to reasons suggested heretofore, the whole rate situation in Texas is yet before the Interstate Commerce Commission, and a satisfactory solution of the difficulties which have appeared may be reached. The order entered herein is not intended to adjudicate any of the issues made by the pleadings, but merely to maintain a status which will result in a minimum of harm.

Opinion of Judge Batts.

Filed Sept. 27, 1917.

In the United States District Court for the Western District of Texas, at Austin.

Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

V. L. Brooks, H. M. Garwood, Hiram Glass, E. B. Perkins, A. H. McKnight and J. W. Terry, for plaintiffs.

B. F. Looney, Attorney General, Luther Nickels and C. 91p M. Cureton, Assistants Attorney- General, for defendants.

Before Batts, Circuit Judge, and Russell and Smith, District Judges.

BATTS, *Circuit Judge:*

After the decision in the Shreveport Case, 234 U. S. 34, the Interstate Commerce Commission extended the territorial scope of the order sustained therein to all Texas. Thereupon the railroads filed Tariff 2-B, which included intra-state rates fixed, it was claimed, in compliance with the order. The validity of the order and the legality of the tariff being questioned, upon an application in this case by the Railroad Companies for an injunction to restrain penalties suits by the State, and upon a cross-bill, praying that the order be declared void, and that the tariff, in so far as it affected intrastate rates, be set aside. Circuit Judges Pardee, Walker and Batts granted the temporary injunction prayed for by complainants, and refused the relief asked by the cross-bill, basing action as to both matters upon the propriety of maintaining the status until the entire case could be considered and determined upon its merits. At the June term of this Court, an application by plaintiffs for a continuance, based principally upon the fact that the matters involved were under further consideration by the Interstate Commerce Commission, was granted. Thereafter the Attorney General of Texas instituted a suit in the District Court of Travis County, Texas, to prevent the railroads from charging certain of the rates included in Tariff 2-B. Whereupon the Railroad Companies, plaintiffs or interveners herein, applied for an injunction to prevent the prosecution thereof.

The subject matter of the State suit is a part of that involved in this case. The jurisdiction of this Court with reference thereto has been invoked by the parties plaintiff and defendant and by interveners; the jurisdiction has been exercised by this Court in grant-

ing an injunction at the prayer of plaintiffs, and refusing one asked by defendants, and by considering and determining an application for a continuance. The purpose of the three Judges men-
92p tioned, as expressed in the opinions filed, will be defeated by trial in the State court. Jurisdiction having been conferred by law, having been invoked by all the parties, and having been exercised by the Court, its protection is a right and duty not limited by Section 266, J. C. The injunction prayed for by Complainants is granted.

In his answer herein, the Attorney General of Texas asked that the rates complained of in the State court be set aside, as not required by the order of the Interstate Commerce Commission. This was before the three Judges mentioned. Their judgment with reference thereto was not appealed from or otherwsie attacked. But, waiving all questions as to the legality or propriety of modifying their action, our conclusion is that the present status should be maintained until such time as this Court may consider all of the grave questions of law and all the great mass of facts connected with this complicated and important litigation. The fact that the matters involved are again before the Interstate Commerce Commission, and that their action may affect the rates attacked, furnishes an additional reason for our conclusion. The relief asked by defendants is refused.

93p *Supplemental Bill of Complaint.*

Filed March 24, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Supplemental Bill.

To the Honorable Judge of the said United States District Court:

Now come the Plaintiffs, and under leave of the Court file this their supplemental bill of complaint and respectfully aver:

I.

Since the filing of the original bill, on September 4th, 1916, William D. Williams, a member of the Railroad Commission of Texas, and a defendant, died, and has been succeeded by C. H. Hurdlestone, who resides in the City of Austin, Travis County, in the Western

District of Texas, who has duly qualified and is acting as such Railroad Commissioner, and is now made a party; that Duval West, one of the plaintiffs, as a Receiver of the San Antonio Valley & Gulf Railroad Company, has ceased to act as such Receiver, and A. R. Ponder, one of the plaintiffs herein, is now sole Receiver of the San Antonio Valley & Gulf Railroad Company. With these exceptions the Plaintiffs and Defendants are the same as in the original bill.

II.

That the allegations contained in the original bill and replication are now re-affirmed and made a part of this supplemental bill.

III.

In pursuance of, in obedience to, and acting under au-
94p thority of the order of the Interstate Commerce Commission of July 7th, 1916, described in the original bill of complaint and annexed thereto as Exhibit A, plaintiffs, acting with other Railway Companies described in said order, prepared and caused to be filed with the Interstate Commerce Commission on or about October 28th, 1916, a certain styled Texas Lines' Tariff No. 2-B, issued by A. C. Fonda, Agent, I. C. C. No. 33, a copy whereof is filed herewith marked Exhibit F, and so acting, plaintiffs, on November 7th, 1916, filed with the Interstate Commerce Commission Supplement No. 4 to said Tariff No. 2-B, and plaintiffs, so acting, on December 4th, 1916 filed with the Interstate Commerce Commission Supplement No. 8 to the said Tariff No. 2-B, and plaintiffs, so acting, on January 1st, 1917, filed with the Interstate Commerce Commission Supplement No. 9 to the said Tariff No. 2-B, and plaintiffs, so acting, on February 10th, 1917, filed with the Interstate Commerce Commission Supplement No. 10 to the said Tariff No. 2-B, and on February 20th, 1917, plaintiffs, so acting, filed with the Interstate Commerce Commission Supplement No. 12 to said Tariff No. 2-B, copies of which Supplements are filed herewith marked respectively Exhibits G, H, I, J, and K.

That in obedience to so much of said order of the Interstate Commerce Commission of July 7th, 1916, as permits the charging of lower rates between Texas points, where such rates have been depressed by reason of water competition along the Gulf of Mexico and waters contiguous thereto, plaintiffs have provided on page 96 of said Tariff 2-B, a scale of rates for application between Houston, Galveston, Texas City and Velasco, and between Velasco, Galveston and Texas City, and between other points named on said page 96, to which reference is here made, a scale of class rates lower than the rates published in said Texas Lines' Tariff No. 2-B, for application for the same distances between Shreveport and points in Texas, which said lower rates have been caused or influenced by water competition,
and these defendants have published on page 88 of said Texas
95p Lines' Tariff No. 2-B a provision that rates between Galveston, Port Bolivar, Velasco, Brazosport, Bryan Mound, Texas, and

the following points on the one hand, stations between Houston and Galveston on the G. H. & S. A. Ry., stations between Houston and Galveston on the G. H. & H. R. R., stations between Houston and Galveston on the G. C. & S. F. Ry., Anchor, Angleton, Ross and Clute on the Ho. & B. V. Ry., stations Hawdon to Anchor, inclusive, on the I. & G. N. Ry., and all other points in Texas on the other hand shall not exceed the rates applying between Houston and such other points in Texas under the provisions of Items Nos. 1200 and 1225, or reissues, plus the following differential rates in cents per 100 pounds:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates.....	7	6	5	3	3	3	3	2	2	2

and on the same page of said Tariff a differential basis of rates is prescribed to and from Texas City, Texas, to and from Port Arthur and Sabine Pass, Texas, to and from Aransas Pass, Texas, and that said differential rates as shown on page 88 have been influenced or depressed by water competition. That on pages 101 and 102 of said Tariff, differential rates are prescribed to and from the said points described on page 88 thereof on cotton seed and products, carloads, which differential rates have also been influenced or depressed by water competition.

That the rates prescribed or named in said Tariff No. 2-B, and the Supplements thereto, are in no case or cases higher than the rates found and adjudged by the Interstate Commerce Commission in said order of July 7th, 1916, to be reasonable and just maxima rates.

That said Tariff No. 2-B, and the Supplements thereto, so filed with the Interstate Commerce Commission, were and are in all respects in compliance with and authorized by said order of the Interstate Commerce Commission, dated July 7th, 1916.

Plaintiffs and each of them propose to continue to charge the rates named in said Tariff No. 2-B, and the Supplements thereto, on shipments between Shreveport and points in Texas, and on shipments between points in Texas.

96p That the Defendant, B. F. Looney, purporting to appear for the State of Texas, and as Attorney General of the State of Texas, and others petitioned the Interstate Commerce Commission for a rehearing, and to set aside its order of July 7th, 1916, and to suspend said Tariff No. 2-B, alleging, among other things that said Tariff No. 2-B, was not in conformity with or authorized by the said order of July 7th, 1916, which petitions were heard under the direction of the Interstate Commerce Commission by and before its Suspension Board on or about the 19th and 20th days of October, 1916, and thereafter such petitions for re-hearing and suspension were considered by the Interstate Commerce Commission in executive session; that thereafter, on the 31st day of October, A. D. 1916, the Interstate Commerce Commission made an order, a copy of which is hereto annexed marked Exhibit L, the effect of which order was to suspend the rates on cattle, lignite, cord-wood and tan bark named in said Tariff No. 2-B until the first day of March, 1917, unless otherwise ordered by the Commission, and to authorize, sanction and permit the balance of said Tariff No. 2-B, as in conformity with and au-

thorized by the said order of July 7th, 1916, to take effect on November 1st, 1916, and on and since said date plaintiffs have charged on shipments moving between Shreveport and Texas and between points in Texas, the rates named in said Tariff No. 2-B, and the Supplements thereto, except those items so suspended by the order of the Interstate Commerce Commission. That a number of the rates named by the Railroad Commission of Texas, and not embraced in the order of the Interstate Commerce Commission of July 7th, 1916, are for convenience published in said Tariff No. 2-B. That also on the 31st day of October, A. D. 1916, the Interstate Commerce Commission made an order, a copy of which is hereto annexed marked Exhibit M, setting down for oral argument for December 6th, 1916, the petitions of said B. F. Looney and others for a re-hearing and re-opening of the matters dealt with in said order of the Interstate Commerce Commission of July 7th, 1916, and for a suspension of said Tariff No. 2-B, which oral argument occurred before the Interstate Commerce
97p Commission, at its office in Washington, D. C., on the 6th and 7th days of December, 1916. That thereafter on the 26th day of January, 1917, the Interstate Commerce Commission made an order, a copy of which is hereto annexed marked Exhibit N, granting a re-hearing, but providing that pending such re-hearing and decisions thereon the said order of July 7th, 1916, should remain in full force and effect. That on or before the 6th day of December, 1916, the Railroad Commission of Texas became a party by voluntary intervention in said cause No. 8418, Railroad Commission of Louisiana vs. Aransas Harbor Terminal Railway Company, et al., before the Interstate Commerce Commission, and since then has been a party thereto. That on the 16th day of February, 1917, the Interstate Commerce Commission made an order further suspending the said rates on cattle, cord-wood, lignite and tan bark, until the first day of September. 1917, unless otherwise ordered by the Commission, a copy of which is hereto annexed marked Exhibit O.

That the Interstate Commerce Commission ordered a hearing before one of its examiners, beginning at Dallas, Texas, March 12th, 1917, to take and receive evidence on the re-hearing on the said case of Railroad Commission of Louisiana vs. Aransas Harbor Terminal Railway Company, et al., in which said order of July 7th, 1916, was entered. That upon application to the Interstate Commerce Commission by the Defendant, B. F. Looney, and his associates, the date of said hearing at Dallas was postponed by the Interstate Commerce Commission until March 26th, 1917, and again, on the application of the Defendant, B. F. Looney, and his associates, the date of said hearing at Dallas was postponed by the Interstate Commerce Commission from March 26th, 1917, to April 16th, 1917.

IV.

That on or about the 25th day of January, 1917, the defendant, B. F. Looney, prepared or caused to be prepared and to be introduced in the Senate of the Legislature of the State of Texas, by Senators Hudspeth, Lattimore and Bailey, a certain bill numbered

98p Senate Bill 219, a copy of which is hereto annexed marked Exhibit P. Said Bill was referred to the Judiciary Committee of the Senate of Texas, which Committee, after having had an elaborate hearing thereon, reported said bill to the State Senate with a recommendation that it do pass; that thereafter on several different dates, said bill was considered by the Senate of Texas, but the Legislature of Texas adjourned on the 21st day of March, 1917, without having passed said bill. That the Defendant, B. F. Looney, has asserted and claimed and still asserts and claims that even without an act of the Legislature, as proposed in said Senate Bill 219, he has had and now has the power and authority to file suits against the plaintiffs, and each of them, for forfeiture of, and obtain forfeitures of their charters, and the appointment of Receivers of the properties of plaintiffs, and each of them, with or without notice, to take away from them and each of them, and to take charge of, control and operate their respective railroads and properties, all of which Defendant, B. F. Looney, as Attorney General, has threatened to do, that the purpose of said Defendant, Looney, in filing such forfeiture suits, obtaining the appointment of Receivers, etc., among other- would be to destroy the rights of plaintiffs in this case, and deprive them of their right to act under the said orders of the Interstate Commerce Commission, and under the Constitution and Laws of the United States, by and among other things causing the Receivers, who may be so appointed, when they get possession of the properties of plaintiffs to charge, between Texas and Shreveport, Louisiana, the rates heretofore fixed and named by the Railroad Commission of Texas, in lieu of those authorized by the said orders of the Interstate Commerce Commission and the Constitution and Laws of the United States, and thereby in large part destroy the cause of action herein of plaintiffs, and to that extent oust this Court of jurisdiction heretofore acquired of the subject matter of this suit and of the controversy involved, it being the theory of the defendant, Looney, among others, that the discriminations found by the Interstate Commerce Commis-

99p sion to exist against said Shreveport, could have been and should be cured by applying and charging, between points in Texas and Shreveport, Louisiana, the rates so named and fixed by the Railroad Commission of the State of Texas, instead of those so fixed by the Interstate Commerce Commission, on traffic moving between Shreveport and points in Texas. That some of the facts and reasons why the plaintiffs refuse to charge the said rates of the Texas Railroad Commission between Shreveport and Texas points are set forth on pages 121 and 122 of the Report of the Interstate Commerce Commission of July 7th, 1916, annexed to the original bill as Exhibit A. The extension of the said Texas Commission System of rates to Shreveport only would cause a material reduction in many of the Interstate rates of plaintiff to and from points in Eastern Texas and cause them a substantial loss in revenue; that the extension of said Texas Commission System of rates to Vicksburg, Mississippi with probable extension thereof to points East of Vicksburg, would cause a very large reduction in interstate rates and revenues of plaintiffs on interstate shipments, to and from points in the State of Texas

the amount whereof it is impractical to state. As shown by the original bill of complaint plaintiffs are justly entitled to largely increased revenues, and are therefore, legally and equitably entitled to charge the rates between Shreveport and Texas, found by the Interstate Commerce Commission to be just and reasonable Maxima rates, and in order to remove the discrimination against Shreveport, as required by said order of the Interstate Commerce Commission, are legally and equitably entitled to charge the same rates for the same distances between points in the State of Texas.

V.

That on the 1st day of March, 1917, the Railroad Commission of Texas issued its order or circular No. 5115, by which said Railroad Commission withdrew or cancelled its circular No. 5060, dated August 28th, 1916, which is copied in the bill of complaint, but said Railroad Commission of Texas has not thereby surrendered the power to hereafter restore said circular No. 5060 or to cancel or attempt to cancel the tariffs therein named and described.

100p

VI.

That on the hearing hereof plaintiffs will introduce exhibits supplementing the record before the Interstate Commerce Commission by showing the financial results of their operations to the end of the fiscal year, which terminated June 30th, 1916. For the first few months of the current fiscal year, which will end June 30th, 1917, the earnings of most of the plaintiffs have been considerably larger than for the corresponding period of many fiscal years theretofore; that plaintiffs fear and are of the opinion that such increased earnings are in a large part temporary, due principally to the stimulation of traffic caused by the very high price of cotton and of other products and commodities, and by the transportation of troops and supplies for the Government of the United States to and from the Mexican border.

Wherefore, premises considered, plaintiffs pray as in their original bill, and further:

a. That your Honors grant a temporary injunction restraining B. F. Looney, as Attorney General, his successors in office and all others from filing any suit or suits against the plaintiffs or either or any of them, or against either or any of the companies of whose properties either or any of the plaintiffs are now Receiver or Receivers, for forfeiture of charter or charters or any other rights under the constutution, statutes and laws of the State of Texas, and restraining the said B. F. Looney, individually and as Attorney General, his successors in office and all others from applying to any Court or Judge other than the Judges of the United States for the 5th Circuit and the Western District of Texas, for the appointment of any Receiver or Receivers for the railroads or other properties of

plaintiffs, or either or any of them, or of the properties of either or any of the companies of which either or any of the plaintiffs
101p are now Receiver or Receivers, and that until the application for a temporary injunction can be heard and decided, your Honors grant a temporary restraining order embracing the relief herein prayed for, to continue in effect until said application for a temporary injunction has been decided.

b. That your Honors grant a temporary injunction restraining the defendant, the Railroad Commission of Texas and the members thereof from hereafter cancelling or undertaking to cancel the tariffs and rates set forth and described in said circular No. 5060, dated August 28th, 1916.

c. That your Honors grant a temporary injunction restraining the defendants, the Railroad Commission of Texas and the members thereof, and B. F. Looney, as Attorney General his successors in office, and all other persons, from undertaking to require plaintiffs or either or any of them to charge the rates prescribed and named by the Railroad Commission of Texas, where such rates vary or differ from the rates named in said Tariff No. 2-B and the Supplements thereto, for application between points in the State of Texas, by the filing of penalty suits against plaintiffs, or either or any of them, or in any manner or way or by any form or process of law.

d. That on final hearing hereof all relief in this and in the original bill of complaint prayed for be made perpetual.

H. M. GARWOOD,
E. B. PARKER,
J. W. TERRY,
E. B. PERKINS,
T. J. FREEMAN,
GEO. THOMPSON,
I. B. DABNEY,
FRANK ANDREWS,
C. C. HUFT,
HIRAM GLASS,
Solicitors for Plaintiffs.

STATE OF TEXAS,
County of Galveston:

J. S. Hershey, being first duly sworn, deposes and says that he is General Freight Agent of the Gulf, Colorado & Santa Fe Railway Company, one of the plaintiffs in the foregoing supplemental bill; that he has read the same and knows the contents thereof, and that upon his knowledge, information and belief the averments therein made and the matters therein stated are true.

J. S. HERSHEY.

Subscribed and sworn to before me this 23rd day of March, 1917.

[SEAL.] OLIVER B. ABBOTT,
Notary Public Within and for County of Galveston, State of Texas.

102*p* EXHIBIT L.

Interstate Commerce Commission,

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of the order of the Commission, entered October 31, 1916, in investigation and suspension docket No. 958, Shreveport-Texas Cattle, Lignite, Wood and Tan Bark, the original of which is now on file and of record in the office of this Commission.

In testimony whereof I have hereunto set my hand and affixed the seal of said Commission this 1st day of November, A. D. 1916.

(Signed) GEORGE B. McGINTY,
[SEAL.] *Secretary of the Interstate Commerce Commission.*

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 31st Day of October, A. D. 1916.

Investigation and Suspension Docket No. 958.

Shreveport-Texas Cattle, Lignite, Wood, and Tan Bark.

It appearing, That there have been filed with the Interstate Commerce Commission by A. C. Fonda and F. A. Leland as agents for certain carriers, tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 1st day of November, 1916, designated as follows:

A. C. Fonda, Agent: I. C. C. No. 33;

F. A. Leland, Agent: Supplement No. 62 to I. C. C. No. 1005, Supplement No. 8 to I. C. C. No. 1121, Supplement No. 6 to I. C. C. No. 1141.

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety and the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz:

A. C. Fonda, Agent: I. C. C. No. 33, on title page thereof, the provisions reading "(Cancels I. C. C. No. 16, Except Items Under Suspension in Supplements Nos. 33 and 35, Under I. & S. Docket No. 837)" in so far as said provision cancels rates, charges, regulations and practices published in tariff I. C. C. No. 16 as amended,

applicable to the transportation of Cattle; Stock Cattle, not in condition for slaughter; Lignite; Cornwood; and Tan Bark; in carloads; on pages 114, 115 and 116 thereof, in Rate Sections Nos. 23 and 24; and the minimum carload weights of Cattle and the rates in columns Nos. 1 and 3 in Rate Sections Nos. 25 and 26; and on pages 121 and 122 thereof;

103*p* F. A. Leland, Agent: Supplemental No. 62 to I. C. C. No. 1005, in so far as same cancel the schedules contained in Items Nos. 2026-B, 2032-B and 2038-B on page 60 of Supplement No. 59 to I. C. C. No. 1005; Supplement No. 8 to I. C. C. No. 1121, on page 4 thereof, in Item No. 150*a* in so far as same cancel rates on Cattle and stock cattle; on page 6 thereof, in Item No. 1278*d* and the explanation of the reference mark "1 in a circle" in so far as same increase or cancel rates on cattle from Shreveport, La., and points taking same rates; on page 9 thereof, in Items Nos. 1296*a*, 1298*a*, 1302*a*, 1304*a*, 1320*a*, 1326*a*, 1332*a* and 1416*a*; and on page 10 thereof, in Item No. 1800*a*; Supplement No. 6 to I. C. C. No. 1141, on page 6 thereof, in Item No. 96*a* in so far as same cancel rates on Cattle and stock cattle; on pages 17 and 19 thereof, providing for the cancellation of rates on cattle from Shreveport, La., and points taking same rates; on pages 26, 27, 28, 29, 30 and 32 thereof, in Items Nos. 2508*a*, 2566*a*, and 2592*a*, in Item No. 2634*a* in so far as same cancel rates on cattle (not in condition for slaughter) to Bossier City and Shreveport, La.; in Items Nos. 2670*a*, 2676*a*, 2682*a* and 2694*a*.

It further appearing, That said schedules make certain changes in rates for the transportation of cattle; lignite; cordwood; and tan bark; in carloads, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred until the 1st day of March, 1917, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the rates and charges thereby sought to be changed shall not be increased and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies thereof be forthwith served upon the carriers parties to said schedules, and upon A. C. Fonda and F. A. Leland, Agents,

and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

By the Commission:

[SEAL.] GEORGE B. McGINTY, *Secretary.*

EXHIBIT M.

Interstate Commerce Commission,

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of
104p order of the Commission, entered October 31, 1916, in investigation and suspension dockets No. 710, Eastern Texas Class Rates, and No. 729, Class Rates to Shreveport, La., and in cases No. 3918 J. J. Meredith, Shelby Taylor and Henry B. Schrieber, constituting the Railroad Commission of Louisiana against St. Louis Southwestern Railway Company, and others, No. 8290, Shelby Taylor, Chairman, B. A. Bridges and John T. Michel, members of and constituting the Railroad Commission of Louisiana against St. Louis, San Francisco & Texas Railway Company, and others, and No. 8418 Shelby Taylor, Chairman, B. A. Bridges and John T. Michel, members of and constituting the Railroad Commission of Louisiana against Aransas Harbor Terminal Railway Company, and others, the original of which is now on file and of record in the office of this Commission.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Commission this 1st day of November, A. D. 1916.

(Signed) GEORGE B. McGINTY,

[SEAL.] *Secretary of the Interstate Commerce Commission.*

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 31st Day of October, A. D. 1916.

Investigation and Suspension Docket No. 710.

Eastern Texas Class Rates.

Investigation and Suspension Docket No. 729.

Class Rates to Shreveport, La.

Nos. 3918, 8290, and 8418.

RAILROAD COMMISSION OF LOUISIANA

v.

ARANSAS HARBOR TERMINAL RAILWAY COMPANY et al.

105p Upon consideration of various petitions filed in the above-entitled proceedings, asking that they be reopened for further

hearing and argument, and that various parties be permitted to intervene:

It is ordered, that oral argument be had on said petitions on December 6, 1916, at 10:30 A. M., at the office of the Commission in Washington, D. C., for the purpose of showing (1) whether or not these proceedings should be reopened and, if so, for what purposes and to what extent; and (2) if reopened, what further parties, if any, should be permitted to intervene therein.

It is further ordered, that pending such argument and decision thereon the order entered herein on July 7, 1916, shall remain in full force and effect.

By the Commission:

[SEAL.] GEORGE B. McGINTY, *Secretary.*

EXHIBIT N.

4253.

Interstate Commerce Commission.

No. 8418.

RAILROAD COMMISSION OF LOUISIANA

v.

ARANSAS HARBOR TERMINAL RAILWAY COMPANY et al.

Submitted December 21, 1916; Decided January 26, 1917.

Petitions of Attorney General of Texas, Railroad Commission of Texas, and others, for reopening and leave to intervene granted; for vacation of order of July 7, 1916, denied.

B. F. Looney and Luther Nickels for the State of Texas and the Railroad Commission of Texas.

Edward P. Byars for Fort Worth Freight Bureau, Texas Brick Manufacturers Association, Texas Wholesale Fruit & Produce Dealers Association, and Chico Crushed Stone Company.

S. H. Cowen for Industrial Traffic League, Amarillo and Panhandle Traffic Association, Acme Cement Company, and others.

H. B. Dorsey for Texas Grain Dealers Association.

H. B. Driscoll for Waco Chamber of Commerce and Texas Butter, Egg & Poultry Association.

106p E. Eikel for Dittlinger Lime Company.

H. H. Haines for Galveston Commercial Association.

Paul Kayser for Houston Chamber of Commerce, South Texas Cotton Oil Company, and others.

G. S. Maxwell for Texas Industrial Traffic League and Dallas Chamber of Commerce & Manufacturers Association.

J. A. Morgan for Houston Chamber of Commerce.

E. C. Nettles for Chamber of Commerce, Post, Tex., and Postex Cotton Mills.
W. S. Pawkett for San Antonio Freight Bureau.
F. E. Potts for Texarkana Pipe Works and San Antonio Sewer Pipe Works.
N. A. Stedman for Texas Industrial Traffic League.

1. This report also embraces No. 3918, Railroad Commission of Louisiana v. St. Louis Southwestern Railway Company et al.; No. 8290, Railroad Commission of Louisiana v. St. Louis, San Francisco & Texas Railway Company et al.; and Investigation and Suspended Docket Nos. 710, Eastern Texas Class Rates, and 729, Class Rates to Shreveport, La.

77310-17.

46.

Interstate Commerce Commission Reports.

J. E. Bryant for City of Amarillo, Tex., Panhandle Traffic League, and J. E. Bryant Company.
M. C. Nobles for Nobles Brothers Grocery Company.
D. P. Seay for Morrow Thomas Hardware Company.
Barney Smith for Texas Rolling Mill Company.
A. C. Fonda, H. M. Garwood, J. S. Hershey, John B. Payne, J. W. Terry, Gentry Waldo, and J. L. West for all Texas carriers, defendants.
George T. Atkins, Jr., for Shreveport Chamber of Commerce.

Report of the Commission on Petitions for Reopening.

HALL, *Commissioner:*

The history of these proceedings is set forth in Railroad Commission of La. v. St. L. S. W. Ry. Co., 23 I. C. C., 31; Railroad Commission of Louisiana v. St. L. S. W. Ry. Co., 34 I. C. C., 472; and Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C., 83.

In our report in Railroad Commission of Louisiana v. A. H. T. Ry. Co., supra, decided July 7, 1916, we found, in brief, that
107p the class rates and rates on certain specified commodities between Shreveport, La., and points in Texas were unreasonable and unduly prejudicial to Shreveport as compared with rates for like distances in Texas; and that the application to the transportation of property within Texas of classification rules different from and minimum carload weights lower than those applicable to transportation of like property between Shreveport and Texas points was unduly prejudicial to Shreveport. Reasonable maximum rates between Shreveport and Texas points were prescribed and the undue prejudice found to exist was ordered removed, the order accompanying the report becoming effective November 1, 1916.

Subsequent to the promulgation of this report and order, but before the effective date of the latter, petitions were filed on behalf of the state of Texas, the attorney general of Texas and various localities and commercial interests of Texas, asking for the suspension of the tariff purporting to comply with our order and for a full hearing in respect of the rates contained in said tariff.

Informal hearing was had October 19 and 20, 1916, on these requests for suspension. At this hearing full opportunity was afforded for the presentation of objections to the proposed rates. As a result we suspend the operation of items in the tariff naming rates on several commodities pending an investigation of the propriety thereof; but a majority of the Commission decline to suspend the tariff in its entirety.

Some of the petitions asked that these proceedings be reopened. Upon consideration thereof we ordered that oral argument be had on December 6, 1916, to determine (1) whether or not these proceedings should be reopened, and, if so, for what purposes and to what extent; and (2) if reopened, what further parties, if any, should be permitted to intervene.

Argument was had; numerous exhibits were submitted; and briefs were filed, both then and later. In so far as was possible within the limited time at our disposal every interested person, association, and community was heard, and all briefs and exhibits tendered were received.

108p It is impracticable to restate here all that was urged in opposition to or in support of our report and order of July 7, 1916, and the tariff purporting to comply therewith. The attorney general and assistant attorney general of Texas appeared on behalf of that state and of the Railroad Commission of Texas. They challenge our jurisdiction under the act to make the order in question, but say that, assuming there was no question concerning jurisdiction, additional evidence bearing upon the issues in this proceeding will be submitted if the proceedings are reopened. They further urge that we suspend the tariff purporting to comply with our order of July 7, 1916. In addition to what was said on behalf of the state of Texas as a whole, individuals, associations, and communities representing various interests in Texas presented what they conceived to be instances of hardship which would result from the operation of the tariff pursuant to our order.

The position of the carriers and of the representative of the Shreveport Chamber of Commerce is that our jurisdiction is beyond question; that our order is supported by ample evidence; that it is appropriate to effect the proper disposition of the issues presented; and that the tariff filed by the carriers in response thereto complies with its terms. On behalf of the carriers it was stated that occasional instances of hardship where the rates contained in the tariff under attack are on a higher level than corresponding rates into Texas from points in Oklahoma, for example, will be eliminated by increasing the latter rates, which are, it is said, at present lower than is just and reasonable. We have recently been advised that tariffs

purporting to eliminate these alleged instances of hardship have been filed.

The Railroad Commission of Louisiana, complainant in this proceeding, advises that it "will not appear in opposition to application of Texas authorities and shippers to reopen Shreveport Rate Case or to oppose any new parties to the case if it is reopened."

These proceedings were discussed at length in our thirtieth annual report to the Congress, submitted December 1, 1916, at page
109p 80 et seq. After quoting from our report of July 7, 1916, supra, we said, at page 89:

We call to mind once more the fact previously noted, that this Commission has not reached out in a spirit of aggression to lay its hands on situations involving the principles of the Shreveport Case. While we have decided over 50 of such cases, and more are being presented to us from time to time, we have dealt with them in the regular line of official duty. * * *

The vital question is, what is the nature of the problem, and through what agencies and by what methods can that problem best be solved in the interest of the whole public?

* * * In the Shreveport Case proper, the history of which has been recited above, we had the assistance of the authorities of only one of the states concerned in addition to counsel for interested parties. In other cases involving the same principles, we have had the active cooperation of the respective state commissions. This cooperation was entirely voluntary and without status under the act to regulate commerce, except in so far as the respective state commissions acted in the capacity of interested parties of record.

In our report to the Congress we also said, at page 87:

At the hearing on the original complaint counsel for complainants stated of record that the Railroad Commission of Texas had been invited to participate in the proceedings, but had made no reply. At subsequent hearings, as stated in our reports, 34 I. C. C., 472, 475, 41 I. C. C., 83, 86, representatives of the Texas Commission were present, but took no part in the proceedings.

We are not advised as to the reasons prompting the Railroad Commission of Texas to refrain from participation in these proceedings until after the issuance of our report and order of July 7, 1916. Presumably they were sufficient for that body in the exercise of its discretion, and it is not our province to consider them. There is no provision in the act for compelling any party to intervene in a proceeding before us, and such participation would necessarily be entirely voluntarily.

The situation now presented is that the state of Texas and the Railroad Commission of Texas, represented by the constituted authorities of that state, wish to have these proceedings reopened, on the ground that new and material evidence will be submitted and that the authorities of the state will cooperate with us in bringing about a just and reasonable settlement of this question. The authorities of the state of Louisiana do not object to such a reopening.

110p The Texas authorities appreciate the fact that as the tariff under attack became effective November 1, 1916, except as to items suspended by us as noted above, we have no power to suspend its operation, but urge that the same effect, as to intrastate traffic, can be secured by vacating and setting aside our order of July 7, 1916. With this suggestion we are unable to agree. Our order was made after careful consideration, upon the basis of a voluminous record. To vacate this order might have the effect of reinstating many of the discriminations formerly existing which have been shown to be real and material and of long standing. Argument has been had since the order was entered, but no further evidence in the strict sense of the word has been submitted. In the absence of a showing of error in our report and order, we are of opinion that the order should stand pending the further proceedings now contemplated.

The desirability of cooperation with the state authorities is, however, obvious. Under the circumstances recited above we are of opinion and conclude that these proceedings should be reopened for further hearing, the order of July 7, 1916, to remain in full force and effect pending such hearing, and decision thereon.

An appropriate order will be entered.

43 I. C. C.

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 26th Day of January, A. D. 1917.

No. 8418.

RAILROAD COMMISSION OF LOUISIANA

v.

ARANSAS HARBOR TERMINAL RAILWAY COMPANY et al.

111p No. 3918.

SAME

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

No. 8290.

SAME

v.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY et al.

Investigation and Suspension Docket No. 710.

Eastern Texas Class Rates.

Investigation and Suspension Docket No. 729.

Class Rates to Shreveport, La.

Upon consideration of various petitions filed in the above-entitled proceedings, asking that they be reopened for further hearing and argument, and of the oral argument had thereon:

It is ordered, That these proceedings be, and they are hereby, reopened for further hearing.

And it is further ordered, That pending such hearing or hearings and decisions thereon the order of July 7, 1916, herein shall remain in full force and effect.

By the Commission.

[SEAL.] GEORGE B. McGINTY,
Secretary.

EXHIBIT O.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 16th Day of February, A. D. 1917.

Investigation and Suspension Docket No. 958.

Shreveport-Texas Cattle, Lignite, Wood, and Tan Bark.

It appearing, That by an order dated the 31st day of Oc-
112p tober, 1916, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, stated in schedules contained in tariffs, designated as follows:

A. C. Fonda, Agent: I. C. C. No. 33;

F. A. Leland, Agent: Supplement No. 62 to I. C. C. No. 1005, Supplement No. 8 to I. C. C. No. 1121, Supplement No. 6 to I. C. C. No. 1141.

It further appearing, That pending such hearing and decision the Commission ordered that the operation of certain schedules contained in said tariffs be suspended, and that the use of the rates,

charges, regulations and practices therein stated, be deferred upon interstate traffic until the 1st day of March, 1917, and

It further appearing, That such hearing cannot be concluded within the period of suspension above stated,

It is ordered, That the operation of the schedules specified in said order dated the 31st day of October, 1916, be further suspended, and that the use of the rates, charges, regulations and practices therein stated be further deferred upon interstate traffic until the 1st day of September, 1917, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the rates and charges thereby sought to be changed shall not be increased and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission and that copies thereof be forthwith served upon the respondents to this proceeding and upon A. C. Fonda and F. A. Leland, Agents.

By the Commission.

[SEAL.] GEORGE B. McGINTY,
Secretary.

EXHIBIT P,

S. B. No. 219.

1.

By Hudspeth, Lattimore, Bailey.

A Bill to be entitled an Act denying to railroad corporations and other common carrier corporations, their representatives and successors, the right to have, claim, justify, vindicate or 113p enforce any power, benefit or privilege given or described in any law of Texas, and denying to any court created by law of Texas jurisdiction over any cause brought or proposed to be brought by any such corporation, its successors or representatives to fix, claim, or in anywise enforce, any such right, power, benefit or privilege, where such corporation shall on or after March 1st, 1917, disobey the requirements of any constitutional or statutory provision of this State, or any order, rate, rule or regulation of the Railroad Commission of Texas, pertaining to intrastate freight or passenger transportation where such disobedience, etc., is not absolutely necessary to lawful compliance with mandatory regulations prescribed by Congress, or by the Interstate Commerce Commission, or other Federal Board, in the

due and proper exercise of jurisdiction conferred upon them; specifically defining some, but not all, of the laws, the powers, privileges and benefits of which are hereby so denied; providing that the denial of the future use or enjoyment of such powers, privileges or benefits shall not relieve such corporation, or its successors, of the performance of any public duty or to destroy, waive, or otherwise impair liability for penalties, forfeitures, and other remedies incurred by such corporation through such disobedience, etc., declaring certain acts of disobedience to be grounds of forfeiture, providing for suits for forfeiture, venue for same, and regulating certain defenses therein, providing for and regulating the appointment of receivers in such suits; declaring the terms, etc., of the Act to be separable; and declaring an emergency.

Whereas, Section 17 of the Bill of Rights of the Constitution of Texas declares that "No irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof."

Whereas, Section 5 of Article 12 of the constitution of Texas declares that "All laws granting the right to demand and collect freights, fares, tolls or wharfage shall at all times be subject to amendment, modification or repeal by the Legislature;"

Whereas, Section 5 of Article 12 of the Constitution of Texas provides that "The right to authorize and regulate freights, tolls, wharfage or fares levied and collected or proposed to be collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under Legislative control and depend upon Legislative authority;"

Whereas, by Section 4, Article 12, and Section 2, Article 10, of the Constitution of Texas, the Legislature is commanded to pass all laws necessary to prevent extortion and discrimination in freight and passenger rates and to prevent the collection of any such rates unless the same shall have been specially authorized by the law of this State, and by Section 4, Article 12, and Section 22 of Article 4 of the Constitution of Texas, the law enforcing officers of the State are required to prevent the collection of such rates unless authorized by law;"

Whereas, the Legislature, from time to time, has passed laws prescribing and regulating such rates, and providing for a Railroad Commission to prescribe and regulate such rates, which rates have been prescribed and have not been found to be unjust or unreasonable or otherwise illegal;"

Whereas, by Section 8 of Article 10 of the Constitution of Texas, it is provided that "No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except upon condition of complete acceptance of all the provisions of this Constitution applicable to railroads;"

Whereas, each and all of the foregoing provisions of law, and all other laws upon the subject, became and are parts of the
114p charter contracts of common carrier corporations incorporated under the laws of Texas, and became and are conditions upon which the franchises of such corporations were accepted and are being retained;

Whereas, the Legislature, from time to time, as acts of grace, has enacted laws for the benefit of such corporations, the benefits of which were accepted and are being enjoyed upon the condition of allegiance to the laws of Texas;

Whereas, at least two adequate lawful remedies have been provided by the law of this State whereby any such corporation may have any freight or passenger rate set aside and a higher rate substituted therefor if the existing rate or rates are too low, or are otherwise unjust or invalid, which lawful procedure has not been followed by such corporations precedent to the acts mentioned next herein;

Whereas, it appears that many of such corporations, and the officers and managers thereof have disavowed, or are threatening to, by acts and conduct, to disavow allegiance to Texas Laws, and have refused and threatened to continue to refuse to obey the laws of the State of Texas, enacted by the Legislature and to obey rules, rates and regulations prescribed by the Railroad Commission of Texas, and have applied, and threaten in the future to continue to apply rates for the transportation of articles and passengers of intrastate commerce in this State higher than and different from the rates prescribed by the Law of Texas and the rules and regulations of the Railroad Commission of Texas, and claim justification therefor under supposed permissive, but not mandatory, authority of the Interstate Commerce Commission;

Whereas, such conduct of such corporations, in thus disavowing allegiance to Texas Laws, and in thus violating the terms of their charter contracts with the State, and in thus refusing to carry the burdens, while retaining and using the benefits, of their franchises, has brought, and will continue to bring, the Sovereignty of Texas into disrepute, and has inflicted, and will continue to inflict great irreparable injury upon every producer, consumer, manufacturer and shipper in this State through the collection of exorbitant rates, as is shown in part by the following: (1) In a Bill of Complaint filed in the Federal Court of the Western District of Texas by corporations, et al., representing about 80 per cent of the railroad mileage in Texas and seeking an injunction against the Railroad Commission of Texas and the Attorney General, as public officers, and all shippers with notice, from enforcing the laws of Texas, and the rules and regulations of the Railroad Commission of Texas, prescribing rates which have not been held to be unreasonable or unjust, the following allegations are made with respect to the effect of the extortionate rates applied by said corporations, et al., since November 1, 1916, and proposed to be applied by them in the future:

"That the rates found in said order of Interstate Commerce Commission of July 7, 1916, on the classes and various commodities therein named to be reasonable rates to be charged on shipments mov-

ing between Shreveport and points in the State of Texas, while for some distance the same, and in a few instances lower, than rates applicable to such shipments between points in the State of Texas prescribed by the Texas Railroad Commission, are on an average, or taken as a whole, very materially higher than the corresponding rates prescribed by the Texas Railroad Commission, and will, if applied, as permitted, by said report and order of the Interstate Commerce Commission, to shipments moving between points in the State of Texas, yield in revenue to plaintiffs several million dollars per annum more than they would, or could earn under the application to the same business or shipments of the rates prescribed by the Railroad Commission of Texas; that the adoption as required by said order of the Interstate Commerce Commission of Western Classification in
115p lieu of the Texas classification for shipments between points in the State of Texas will also increase the annual earnings of plaintiffs very materially over what they otherwise would be.

(2) Upon the trial of the case of the State of Texas vs. Abilene and Southern Ry. Co. et al. in the District Court of Travis County, October 19th, 1916, Mr. J. L. West, Freight Traffic Manager of the M. K. & T. Lines, with respect to increased revenue expected by his Company from such rates, testified to the following:

Q. Mr. West, have you figured on how much your Company is going to make out of the increased rates put in effect by this tariff?

A. Yes, I have figured a good deal on that.

Q. What is your idea about it?

A. Oh, my idea is that we will—based on traffic, the average of the traffic in the last two fiscal years—that we will probably make a half million dollars increased revenue. That, of course, is an approximate estimate—it is so much so that it is probably a guess.

Q. I understand.

A. But it is based on my familiarity with our traffic and a careful examination of the statistics as to the movement of it and the volume and the various kinds of traffic, and it is subject to correction by reason of erroneous statistics or by reason of change in the preponderance of one kind of traffic against another and so forth.

Q. Did you figure it altogether, or did you have a subdivision in your mind as between State and inter-state where you were going to get the biggest increase?

A. Oh, we will not get much increase out of interstate traffic. You see, the only interstate traffic affected by it is that done to and from Shreveport, and there isn't much traffic between Shreveport and Texas—that is, compared with the larger traffic in Texas—so that I think our increase will come from the intra-state traffic principally.

Q. Well, have you considered the effect upon the other roads?

A. No, sir—that is, I have considered the effect, but I haven't made or attempted any est-mates.

Q. Well, is it your judgment that it will result in increased revenues to the other roads?

A. Oh, yes, some increase.

(3) Upon a hearing before the Interstate Commerce Commission with respect to such increased rates, and the effect thereof upon the

people of Texas, Counsel for the railroads of Texas admitted that such increased rates would impose an additional annual burden of, at least, $4,200,000.00 upon the intra-state commerce of Texas, and expressed the hope that the increase would be at least $8,000,000.00 per year.

(4) The rates and regulations substituted by the railroads of Texas for the rates and regulations prescribed by law and the orders of the Railroad Commission of Texas inflict other great injuries upon the people of Texas, and especially upon the people of West, Northwest and Southwest Texas, and are retarding, and will retard, the development of the commerce and resources of those sections, by reason of discriminations, and other burdens imposed thereby; and

Whereas, it was not, and is not necessary for any railroad or other common carrier corporation to disobey the laws of Texas or the orders and regulations prescribed by the Railroad Commission of Texas, in order to obey and lawfully comply with any valid order or regulation prescribed by Congress or by the Interstate Commerce Commission,

but that such regulations as have been thereby prescribed, and
116p which will probably be thereby prescribed, might be complied
with without disobedience to Texas laws, but in harmony therewith,—Therefore,

Be it enacted by the Legislature of the State of Texas:

Section 1. That no railroad, or other common carrier corporation heretofore or hereafter chartered under the laws of the State of Texas, or exercising, or proposing to exercise any franchise or power granted by the laws of said State, and which shall after the first day of March, 1917, disobey or otherwise refuse or fail to comply with any requirement of any provision of the Constitution of Texas or of any statute enacted by the Legislature of Texas, or of any rate, rule, regulation or order of the Railroad Commission of Texas, with respect to intrastate commerce in Texas, when such disobedience thereto, or refusal or failure to comply therewith is not absolutely necessary in order to obey or comply with any valid and lawful order or regulation made by the Congress of the United States, or under its rightful authority, in the proper exercise of the jurisdiction thereof, shall, as to any future act of such corporation have or claim the justification or benefit of any law of Texas, nor shall any court created by or maintained under the authority of any law of Texas entertain jurisdiction of any cause filed, or proposed to be filed by such corporation for the justification, vindication, or securing or enforcement of any privilege or power claimed by such corporation under any law of Texas.

This section shall not be construed, or enforced, so as to have effect of impairing the obligation of any valid contract pre-existing its enactment, or so as to deny due process of law with respect to any vested right of liberty or property acquired prior to the enactment hereof.

Sec. 2. Among the privileges and powers, but not including all of them, the further exercise, use or benefit of which shall not be claimed, justified or enforced by any such corporation committing any act described in Section 1 of this Act on or after March 1, 1917, are the following:

(1) Any right or privilege given or described in Articles 6537 and 6538 of the Revised Statutes, 1911, or in Chapter 8, Title 115 of the

Revised Statutes, 1911, or any other laws of Texas upon the subject of eminent domain, except where the exercise of such power or right is necessary to the compliance with any requirement of the Legislature of Texas or of the Railroad Commission of Texas with respect to the furnishing of adequate facilities for the performance of public duties, or with respect to any final judgment of a court.

(2) Any right, power or privilege given or described in Article 6535 of the Revised Statutes, 1911, or in Chapter 2, Title 115 of the Revised Statutes, 1911, or Article 6414 of the Revised Statutes, 1911, or Articles 1133, 1134 or 1135 of the Revised Statutes, 1911, or any Chapter, or in any other law upon the subject of amendments to or renewals of or re-issues of charters.

(3) Any power, right or privilege given or described in Article 6615, Article 6624 and Article 6625 of the Revised Statutes of 1911, or any other law upon the subjects of sale, succession or lease.

(4) Any power, right or privilege given or described in Articles 6544 and 6547 and Chapter 16, Title 115 of the Revised Statutes of 1911, or any other law on the subject.

(5) Any right, power or privilege given or described in Chapter 50, Acts of the Regular Session of the Thirty-Fourth Legislature, 1915, or any other law upon the subject.

Nor shall any power, right or privilege the future exercise or use of which is by this Act denied any such corporation be claimed, received or used by any successor or representative of such corporation.

117p Sec. 3. The charter and franchises granted by the Legislature of Texas, or under any law enacted thereby, of each and every railway or other common carrier corporation which shall on or after March 1, 1917, disobey any requirement, rate, rule or regulation prescribed for the government or regulation of such corporation in any provision of the Constitution of Texas or of any statute of this State or of any order or orders of the Railroad Commission of Texas (made within the jurisdiction of such Commission) shall be subject to forfeiture upon such ground or grounds, and the Attorney General shall have such forfeitures declared and adjudged in suits brought for that purpose in the name of the State in some court of competent jurisdiction in Travis County, or some other county of the State in which such corporation, or receiver thereof, has its principal office, or in which it or its receiver, has an office or agent or representative, or in which the cause of action in whole or in part arose.

The foregoing provisions shall not be held or construed to mean that any such act of disobedience in the past, prior to March 1, 1917, was not a cause for judicial forfeiture of such charters or franchises, and nothing in this Act contained shall be construed to waive such forfeitures or grounds thereof.

In any case brought in the name of the State of Texas, on or after March 1, 1917, to have such charters or franchises adjudicated as forfeited, and the defense shall be made that the act or acts of disobedience complained of were caused or done under the supposed authority of any regulation of Congress or of the Interstate Com-

merce Commission, or any other board or body created or given jurisdiction by Act of Congress, such defense shall in no such case be sustained except upon clear and satisfactory showing of the concurrent existence of each and all of the following conditions, to-wit:

(1) That the justifying act or regulation was made by Congress or by the Interstate Commerce Commission, or other such body or board, in the proper and lawful exercise of jurisdiction over the subject thereof.

(2) That the requirements of such Act of Congress, or order of the Interstate Commerce Commission, or other such board or body plead in justification, were lawfully mandatory and of such force as to render disobedience to such provision or provisions of the constitution *of* statutes of Texas, or to the order or orders of the Railroad Commission of Texas, absolutely necessary, in order for such corporation lawfully to obey such Act or regulation of Congress, or order of the Interstate Commerce Commission, or other such body or board, and that lawful compliance with both the Constitution and Statutes of Texas and the order or orders of the Railroad Commission and with such Act or regulation of Congress or order of the Interstate Commerce Commission, or other such board or body could not, under any conditions, be made in whole or part.

Sec. 4. In any suit brought to forfeit the charter and franchise of any such corporation by the State of Texas, upon application of the Attorney General the Court, or judge thereof, in which such suit may be filed, in term time or vacation may appoint a receiver or receivers to take charge of and operate the railway and business of such corporation in obedience to the laws of the State of Texas and of the United States and so as to discharge all the public duties owed by such corporation under such laws pending the final hearing of said cause or the further orders of the court, or judge thereof, in the premises. Such receivers may be so appointed ex parte where the application therefor is supported in material particulars by public records or by affidavits of credible citizens of the State, and upon a finding made and entered of record by such court, or judge thereof, of the probable irreparable injury to the public unless such action be taken. Either party may appeal from the order appoint-
118p ing or refusing to appoint such receivers ex parte such appeal to have precedence over all other causes of a different nature. And in case of ex parte appointment of receivers the court, or judge thereof, shall set such application for further hearing and for hearing any defense or reason, upon the part of the defendant or defendants, why such appointment should not be confirmed and continued pending final hearing or the further orders of the court, or judge thereof, or why such receiver or receivers theretofore so appointed should be discharged; notice thereof shall be immediately given to the defendant or defendants by such court or the judge under its or his direction by mail or telegraph as may be directed. The perfecting of an appeal from the original order of appointment shall suspend such further hearing.

Sec. 5. No court created by any law of this State shall entertain jurisdiction of any cause brought, or proposed to be brought, by such

corporation, its successors, or representatives, for the fixing, enforcement, justification or vindication of any power, right or privilege the future use or benefit of which is by any term of this Act denied.

Sec. 6. Nothing in this Act contained shall be held or construed to relieve any such corporation, or its successors, of the performance of any duty or obligation owed by it to the public or under any law of the State or the United States, or under any final judgment heretofore or hereafter rendered.

Sec. 7. Nothing in this Act contained shall be held or construed to waive, destroy, or in anywise impair the enforcement of liability for penalties, forfeitures, or any other liability owed to the State by reason of the conduct of any such corporation or its officers, with respect to the disobedience past or future, of the laws of Texas, or the orders, rates, rules and regulations of the Railroad Commission of Texas.

Sec. 8. The provisions of this Act, and of each Section thereof, are hereby declared to be separable and if for any reason any term or terms, Section or Sections, or portion or portions of any Section or Sections thereof should be finally held to be invalid or unenforcible, the remainder of the Act, and of such Section or Sections thereof, shall nevertheless remain in full force and effect.

Sec. 9. The fact that there are no adequate laws, or remedies, covering the subject matter of this Act, together with the existence of the facts stated in the preamble of this Act creates an emergency and an imperative public necessity requiring the suspension of the Constitutional rule requiring bills to be read on three several days, and that this Act shall take effect immediately upon its passage, and such rule is hereby suspended, and it is so enacted.

Endorsed: Equity No. 295. In the District Court of the United States for the Western District of Texas, Austin Division. Eastern Texas Railroad Company et al., Plaintiffs, vs. Railroad Commission of Texas et al., Defendants. Supplemental Bill of Complaint. Filed March 24, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

119p *Supplemental Petition in Intervention of Gulf, Texas & Western Railway Company et al.*

In the District Court of the United States for the Western District of Texas, Austin Division.

Eq. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Supplemental Petition in Intervention of Gulf, Texas & Western Railway Company et al.

To the Honorable Judge of the said United States District Court:

Now come the interveners, and under leave of the Court file this their supplemental petition in intervention and respectfully aver:

I.

That the Defendant, R. F. Looney, purporting to appear for the State of Texas, and as Attorney General of the State of Texas, and others petitioned the Interstate Commerce Commission for a rehearing, and to set aside its order of July 7th, 1916, and to suspend said Tariff No. 2-B, alleging, among other things that Tariff No. 2-B was not in conformity with or authorized by the said order of July 7th, 1916, which petitions were heard under the direction of the Interstate Commerce Commission by and before its Suspension Board on or about the 19th and 20th days of October, 1916, and thereafter such petitions for rehearing and suspension were considered by the Interstate Commerce Commission in executive session; that thereafter, on the 31st day of October, A. D. 1916, the Interstate Commerce Commission made an order, a copy of which is annexed to the supplemental bill of plaintiffs, filed herein March 24th, 1917, marked Exhibit L, to which reference is here made, the effect of which order was to suspend the rates on cattle, lignite, cord-
120p wood and tan bark named in said Tariff No. 2-B until the first day of March, 1917, unless otherwise ordered by the Commission, and to authorize, sanction and permit the balance of said Tariff No. 2-B as in conformity with and authorized by the said order of July 7th, 1916, to take effect on November 1st, 1916, and on and since said date plaintiffs have charged on shipments moving between Shreveport and Texas, the rates named in said Tariff No. 2-B, and the Supplements thereto, except those items so suspended by the order of the Interstate Commerce Commission. That a number of the rates named by the Railroad Commission of Texas, and not embraced in the order of the Interstate Commerce Commis-

sion of July 7th, 1916, are for convenience published in said Tariff No. 2-B. That also on the 31st day of October, A. D. 1916, the Interstate Commerce Commission made an order, a copy of which is annexed to said Supplemental bill marked Exhibit M, to which reference is here made, setting down for oral argument for December 6th, 1916, the petitions of said B. F. Looney and others for a rehearing and reopening of the matters dealt with in said order of the Interstate Commerce Commission of July 7th, 1916, which oral argument occurred before the Interstate Commerce Commission, at its office in Washington, D. C., on the 6th and 7th days of December, 1916. That thereafter on the 20th day of January, 1917, the Interstate Commerce Commission made an order, a copy of which order is annexed to said Supplemental bill, marked Exhibit N, to which reference is here made, granting a rehearing, but providing that pending such rehearing and decisions thereon the said order of July 7th, 1916, should remain in full force and effect. That on or before the 6th day of December, 1916, the Railroad Commission of Texas became a party by voluntary intervention in said cause No. 8418, Railroad Commission of Louisiana vs. Aransas Harbor Terminal Railway Company, et al., before the Interstate Commerce Commission, and since then has been a party thereto. That on the

121p 16th day of February, 1917, the Interstate Commerce Commission made an order further suspending the said rates on cattle, cord-wood, lignite and tan bark, until the first day of September, 1917, unless otherwise ordered by the Commission, a copy of which is annexed to said Supplemental bill, marked Exhibit O, to which reference is here made.

That the Interstate Commerce Commission ordered a hearing before one of its examiners, beginning at Dallas, Texas, March 12th, 1917, to take and receive evidence on the rehearing of the said case of Railroad Commission of Louisiana vs. Aransas Harbor Terminal Railway Company, et al., in which said order of July 7th, 1916, was entered. That upon application to the Interstate Commerce Commission by the Defendant, B. F. Looney, and his associates, the date of said hearing at Dallas was postponed by the Interstate Commerce Commission until March 26th, 1917, and again, on the application of the Defendant, B. F. Looney, and his associates, the date of said hearing at Dallas was postponed by the Interstate Commerce Commission from March 26th, 1917, to April 16th, 1917.

That on or about the 25th day of January, 1917, the Defendant, B. F. Looney, prepared or caused to be prepared and to be introduced in the Senate of the Legislature of the State of Texas, by Senators Hudspeth, Lattimore and Bailey, a certain bill numbered Senate Bill 219, a copy of which is annexed to said Supplemental Bill, marked Exhibit P, to which reference is here made. Said bill was referred to the Judiciary Committee of the Senate of Texas, which Committee, after having had an elaborate hearing thereon, reported said bill to the State Senate with a recommendation that it do pass; that thereafter on several different dates, said bill was considered by the Senate of Texas, but the Legislature of Texas adjourned on the

21st day of March, 1917, without having passed said bill. That the defendant, B. F. Looney, has asserted and claimed and still asserts and claims that even without an act of the Legislature, as proposed in said Senate Bill 219, he has had and now has the power
122p and authority to file suits against the interveners, and each of them for forfeiture of, and obtain forfeitures of their charters, (said Defendant, Looney, has already asked for a forfeiture of the charters of the interveners in said suit in the District Court of Travis County, Texas, and described in their original petition in intervention) and the appointment of Receivers of the properties of interveners, and each of them, with or without notice, to take away from them and each of them, and to take charge of, control and operate their respective railroads and properties, all of which Defendant, B. F. Looney, as Attorney General, has threatened to do; that the purpose of said Defendant, Looney, in filing such forfeiture suits, obtaining the appointment of Receivers, etc., among others would be to destroy the rights of interveners in this case, and deprive them of their right to act under the orders of the Interstate Commerce Commission, and under the Constitution and Laws of the United States, by and among other things causing the Receivers, who may be so appointed, when they get possession of the properties of the interveners to charge, between Texas and Shreveport, Louisiana, the rates heretofore fixed and named by the Railroad Commission of Texas in lieu of those authorized by said orders of the Interstate Commerce Commission and the Constitution and Laws of the United States, and thereby in large part destroy the cause of action herein of interveners, and to that extent oust this Court of jurisdiction heretofore acquired of the subject matter of this suit and of the controversy involved, it being the theory of the Defendant, Looney, among others, that the discriminations found by the Interstate Commerce Commission to exist against said Shreveport, could have been and should be cured by applying and charging, between points in Texas and Shreveport, Louisiana, the rates so named and fixed by the Railroad Commission of Texas, instead of those so fixed by the Interstate Commerce Commission, on traffic moving between Shreveport and points in Texas. That some of the facts and reasons why the interveners refuse to charge the said rates of the Texas Rail-
123p road Commission between Shreveport and Texas points are set forth on pages 121 and 122 of the Report of the Interstate Commerce Commission of July 7th, 1916, annexed to the original bill as Exhibit A. The extension of the said Texas Commission System of rates to Shreveport only would cause a material reduction in many of the interstate rates of interveners to and from points in Eastern Texas, and cause them a substantial loss in revenue; that the extension of said Texas Commission System of rates to Vicksburg, Mississippi, with probable extensions thereof to points East of Vicksburg, would cause a very large reduction in interstate rates and revenues of interveners on interstate shipments, to and from points in the State of Texas, the amount whereof it is impractical to state. As shown by the original Petition in Intervention interveners are

justly entitled to largely increased revenues, and are therefore, legally and equitably entitled to charge the rates between Shreveport and Texas, found by the Interstate Commerce Commission to be just and reasonable maxima rates, and in order to remove the discrimination against Shreveport, as required by said order of the Interstate Commerce Commission, are legally and equitably entitled to charge the same rates for the same distances between points in the State of Texas.

II.

That on the 1st day of March, 1917, the Railroad Commission of Texas issued its order or circular No. 5115, by which said Railroad Commission withdrew or cancelled its circular No. 5060, dated August 28th, 1916, which is copied in the bill of complaint, but said Railroad Commission of Texas has not thereby surrendered the power to hereafter restore said circular No. 5060 or to cancel or attempt to cancel the tariffs therein named and described.

III.

That interveners, acting with other Railway Companies, on November 7th, 1916, filed with the Interstate Commerce Com-
124p mission supplement No. 4 of the said Tariff No. 2-B; that interveners, so acting, on December 4th, 1916, filed with the Interstate Commerce Commission supplement No. 8 to the said Tariff 2-B; that interveners, so acting, on January 1st, 1917, filed with the Interstate Commerce Commission Supplement No. 9 to the said Tariff No. 2-B; that interveners, so acting, on February 10th, 1917, filed with the Interstate Commerce Commission Supplement No. 10 to the said Tariff No. 2-B; and interveners, so acting, on February 20th, 1917, filed with the Interstate Commerce Commission Supplement No. 12 to said Tariff No. 2-B, copies of which supplements are filed with said supplemental bill of complaint, marked respectively Exhibits, G, H, I, J, and K, to which reference is here made. That the rates named in said supplements as well as in said Tariff No. 2-B, are in no case or cases higher than the rates found and prescribed by the Interstate Commerce Commission in its order of July 7th, 1916, as reasonable and just maxima rates, and that such tariff, supplements, and rates are in all respects in compliance with and authorized by said order of July 7th, 1916.

IV.

That the interveners, believing that until the validity thereof has been determined, they should obey the order of the District Court of Travis County, Texas, made on October 23rd, 1916, and described in Paragraph XXXV of their petition in intervention, have since said date, on shipments moving between points in the State of Texas, been charging the rates required of them by the tariffs and orders of the Railroad Commission of Texas, and have been applying such rates

to Texas shipments. That interveners promptly prosecuted an appeal from said order of the District Court of Travis County, to the Court of Civil Appeals of the State of Texas, of the Third Supreme Judicial District sitting in Austin, Texas, claiming and asserting that said order was made without jurisdiction, and void, which appeal was submitted to the said Court of Civil Appeals about the 20th day of November, 1916, and has not been determined or decided by the Court of Civil Appeals.

125p Wherefore, premises considered, interveners pray as in their original petition, and further

a. That your Honors grant a temporary injunction restraining B. F. Looney, as Attorney General, his successors in office and all others from filing or prosecuting any suit or suits against the interveners or either or any of them for forfeiture of charter or charters or any other rights under the constitution, statutes and laws of Texas, and restraining the said B. F. Looney, individually and as Attorney General, his successors in office and all others from applying to any Court or Judge other than the Judges of the United States for the 5th Circuit and the Western District of Texas, for the appointment of any Receiver or Receivers for the railroads or other properties of interveners, or of either of them.

b. That your Honors grant a temporary injunction restraining the defendants, the Railroad Commission of Texas and the members thereof from hereafter cancelling or undertaking to cancel the tariffs and rates set forth and described in circular No. 5060, dated August 28th, 1916.

c. That your Honors grant a temporary injunction restraining the defendants, the Railroad Commission of Texas and the members thereof, and B. F. Looney, as Attorney General, his successors in office, and all other persons, from undertaking to require interveners or either or any of them to charge the rates prescribed and named by the Railroad Commission of Texas, where such rates vary or differ from the rates named in said Tariff No. 2-B and the Supplements thereto, for application between points in the State of Texas, by the filing of penalty suits against interveners, or either or any of them, or in any manner or way or by any form or process of law.

d. That on final hearing hereof all relief in this and in the original bill of complaint prayed for be made perpetual.

126p (Signed) H. M. GARWOOD,
HIRAM GLASS,
J. W. TERRY,
D. T. BOMAR,
R. H. WARD,
W. T. ARMSTRONG,
E. B. PERKINS, and Others,
Solicitors for Interveners.

STATE OF TEXAS,
County of Galveston:

J. W. Terry, being first duly sworn, deposes and says that he is one of the Solicitors for the interveners in the foregoing supplemental petition in intervention; that he has read the same and knows the contents thereof, and that upon his information and belief, the averments therein made and the matters therein stated, are true.

(Signed) J. W. TERRY.

Subscribed and sworn to before me this 23rd day of March, 1917.

(Signed) OLIVER B. ABBOTT,
[SEAL.] *Notary Public, Galveston County, Texas.*

Endorsed: Equity No. 295. In the District Court of the United States for the Western District of Texas, Austin Division. Eastern Texas Railroad Company, et al., Plaintiffs, vs. Railroad Commission of Texas, et al., Defendants. Supplemental Petition in Intervention of Gulf, Texas & Western Ry. Co. et al. Filed March 24, 1917, D. H. Hart, Clerk, by A. B. Coffee, Deputy.

127p *Order Directing Issuance of Temporary Injunction.*

Filed April 21, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

In Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

THE RAILROAD COMMISSION OF TEXAS et al., Defendants.

GULF, TEXAS & WESTERN RAILWAY COMPANY et al., Plaintiffs & Interveners,

v.

THE RAILROAD COMMISSION OF TEXAS et al., Defendants.

This cause came on to be heard on motion for a temporary injunction in the above entitled causes on the 4th day of April, 1917, before the undersigned, Don A. Pardee, Circuit Judge in chambers at New Orleans, and the Honorables R. W. Walker and R. L. Batts, Circuit Judges, called to assist under section 266 of the Judicial Code, and evidence introduced, and was argued:

Whereupon, on consideration of the law and the evidence, and the order of the Interstate Commerce Commission of July 7, 1916, and

for the reasons filed herewith, it is ordered that a temporary injunction issue as prayed for, enjoining and restraining during the pendency of these actions or until further order by the Court, the defendants and each of them, and all other officers, individuals, persons and corporations, and his, their, or its attorneys, agents, or employes, from claiming or instituting, or causing to be instituted suit or suits, civil or criminal, against plaintiffs and interveners, or either or any of them, or their or its officers or agents, for the recovery of any damages, overcharges, penalty, fines, or penalties thereunder, by virtue of Chapter 15, Title 115, of the Revised Civil Statutes of the State of Texas, or any other statute thereof, for failure of
128p plaintiffs or interveners, or either of them to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said order of July 7, 1916, or for the charging by plaintiffs, or any or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916, and further to restrain the said Railroad Commission of Texas, and said Allison Mayfield, Charles H. Hurdleston, and Earle B. Mayfield, and their successors in office, from furnishing to any person or persons, copies, certified or otherwise, of any of said tariffs of rates, circulars, schedules, rules, orders and classifications, or of the orders establishing the same, of the Railroad Commission of Texas, against which relief is herein prayed for, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that plaintiffs and interveners, or either or any of them, their or its officers and agents have not observed, and do not observe and obey said tariffs of rates, circulars, schedules, orders and classifications of the Railroad Commission of Texas herein complained of, where the same are in conflict with the rates and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916, and from requesting or authorizing the Attorney General or any other officer of the State of Texas to institute any proceedings against plaintiffs or interveners, or either or any of them, their or its officers and agents, for failure to obey or for disregarding said tariffs of rates, circulars, schedules, rules, orders and classifications of said Railroad Commission of Texas.

Witness our hands, in the City of New Orleans, this 20th day of April, A. D. 1917.

(Signed) DON A. PARDEE,
Circuit Judge.
R. W. WALKER,
Circuit Judge.
R. L. BATTS,
Circuit Judge.

72 *Statement of Evidence on Appeal.*

Filed October 5, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

Equity. No. 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Be it remembered that upon the hearing and trial of Plaintiffs' Second Supplemental Bill of Complaint, and the prayers thereof, and the "Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint" and amendment thereto, and the prayers thereof, before the Court composed of Hon. R. L. Batts, Circuit Judge, Hon. Gordon Russell, District Judge, Eastern District of Texas, and Hon. W. R. Smith, District Judge, Western District of Texas, on the twentieth, twenty-first and twenty-second days of September, A. D. 1917, the following facts were proved and the following evidence was introduced,—the portions of the testimony of the witnesses set out verbatim herein being desired to be so stated by the respective parties and directed to be so reproduced by the Court:

Plaintiffs' Evidence. Original Bill of Complaint.

Plaintiffs introduced and read in evidence their original Bill of Complaint, filed September 4th, 1916, which original Bill, exclusive of Exhibits thereto, reads as follows:

To the Honorable Judge of the said United States District Court:

Now come Eastern Texas Railroad Company, whose principal office is at Lufkin, Texas; The Galveston, Harrisburg & San Antonio Railway Company, whose principal office is at Houston, Texas; Galveston, Houston & Henderson Railroad Company, whose principal office is at Galveston, Texas; Groveton, Lufkin & Northern Railway Company, whose principal office is at Groveton, Texas; Gulf, Colorado & Santa Fe Railway Company, whose principal office is at Galveston, Texas; Fort Worth & Denver City Railway Company, whose principal office is at Fort Worth, Texas; Panhandle & Santa Fe Railway Company, whose principal office is at Amarillo, Texas; South Plains & Santa Fe Railway Company, whose
73 principal office is at Lubbock, Texas; The Houston East & West Texas Railway Company, whose principal office is at Houston, Texas; Houston & Texas Central Railroad Company, whose principal office is at Houston, Texas; St. Louis Southwestern Rail-

way Company of Texas, whose principal office is at Tyler, T
San Antonio & Aransas Pass Railway Company, whose prin
office is at San Antonio, Texas; Texarkana & Fort Smith Rai
Company, whose principal office is at Texarkana, Texas; T
Midland Railroad Company, whose principal office is at Te
Texas; Texas & New Orleans Railroad Company, whose prin
office is at Houston, Texas; Texas & Pacific Railway Comp
whose principal office is at Dallas, Texas; El Paso & Southwe
Railroad Company of Texas, whose principal office is at El
Texas; El Paso & Northeastern Railroad Company, whose prin
office is at El Paso, Texas; Texas Mexican Railway Company, w
principal office is at Laredo, Texas; The Jefferson & N
western Railway Company, whose principal office is at
ferson, Trinity Valley Southern Railroad Company, whose pr
pal office is at ——; St. Louis, Brownsville & Mexico Railway
pany, whose principal office is at Kingsville, Texas; Beaumont,
Lake & Western Railway Company, whose principal office
Houston, Texas; Orange & Northwestern Railway Company, w
principal office is at Orange, Texas; The Rio Grande, El Pa
Santa Fe Railroad Company, whose principal office is at El
Kansas City Mexico & Orient Railway Company of Texas, w
principal office is at San Angelo, Texas; Angelina & Neches
Railroad Company, whose principal office is at ——, Texas; Sh
port, Houston & Gulf Railroad Company, whose principal
is at ——, Texas; The Wichita Valley Railway Company, w
principal office is at Wichita Falls, Texas; Chicago, Rock I
& Gulf Railway Company whose principal office is at Fort W
Texas, each of said companies being a corporation duly cha
and existing under the laws of the State of Texas, except the
& Pacific Railway Company, which is a corporation existing
the laws of the United States; James A. Baker, Receiv
74 the International & Great Northern Railway Company
resides and maintains his office as such Receiver at Ho
Texas; J. W. Robins, Receiver of the Trinity & Brazos Valley Ra
Company, who resides and maintains his office as such Recei
Houston, Texas; Duval West and A. R. Ponder, Receivers o
Antonio, Uvalde & Gulf Railroad Company, who reside and
tain their offices as such Receivers at San Antonio, Texas;
Schaff, Receiver of the Missouri, Kansas & Texas Railway Com
of Texas, who resides and maintains his office as such Recei
Dallas, Texas; G. H. Schleyer and Avery Turner, Receivers
Fort Worth & Rio Grande Railway Company, St. Louis, San
cisco & Texas Railway Company and Brownwood North &
Railway Company, who reside and maintain their offices as
Receivers at Fort Worth, Texas; George O. Morris, Receiv
Houston & Brazos Valley Railway Company, who resides and
tains his office as such Receiver at Freeport Texas; said Rec
being each and all duly qualified and acting in the resp
capacities named, and having authority to prosecute this suit,
plaining of Allison Mayfield, William D. Williams and Ea
Mayfield, who compose the Railroad Commission of Texas, c

sued herein as such Railroad Commission, and each of whom resides in the City of Austin, within the Austin Division of the Western District of Texas, and Benjamin F. Looney Attorney General of the State of Texas, who resides in the said City of Austin; and of American Steel & Wire Association of Texas, a corporation having its principal office in the City of Dallas, Texas, and whose President and Treasurer is J. P. Tufts, of said City, upon whom service may be had; Blair & Hughes Company, a corporation chartered under the laws of the State of Texas with its principal office in the City of Wichita Falls, Texas and having branch places of business in the City of Dallas, Texas, and in other cities, whose President, Wiley Blair, resides in said City of Wichita Falls, and upon whom service may be had; Higginbotham-Bailey-Logan Company, a corporation chartered under the laws of the State of Texas, whose principal office is in the City of Dallas, Texas, and whose President, R. W. Higginbotham, upon whom service may be had, who resides in the said City; Gulf Pipe Line Company, a corporation
75 chartered under the laws of the State of Texas, with its principal office in the City of Houston, Texas, and whose —, upon whom service may be had, resides in said City; The Texas Company, a corporation chartered under the laws of the State of Texas, with its principal office in the City of Houston, Texas, and whose —, upon whom service may be had, resides in said City; Clifton Manufacturing Company, a corporation chartered under the laws of the State of Texas with its principal office in the City of Waco, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; W. D. Cleveland & Company, a partnership composed of A. S. Cleveland and W. D. Cleveland, Jr., who reside at Houston, Harris County, Texas; James Bute Company, a corporation chartered under the laws of the State of Texas with its principal office in the City of Houston, Texas, which is represented by —— —— who resides in said city and upon whom service of citation may be had; San Augustine Grocery Company, a corporation chartered under the laws of the State of Texas with its principal office in the City of San Augustine, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Wadel-Dickie Hardware Company, a corporation chartered under the laws of the State of Texas, with its principal office in the City of Tyler, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Alexander Woldert, who resides at Tyler, Smith County, Texas; S. A. Pace Grocery Company, a corporation chartered under the laws of the State of Texas, with its principal office in the City of Corsicana, Texas, which is represented by *by* —— ——, who resides in said city and upon whom service of citation may be had; Dallas Cotton Mills, a corporation chartered under the laws of the State of Texas with its principal office in the City of Dallas, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Washer Manufacturing Company, a corporation chartered under the laws of the State of Texas with its prin-

cipal office in the City of Dallas, Texas, which is represented
78 by —— —— who resides in said city and upon whom service of citation may be had; Seaman-East Grocery Company, a corporation chartered under the laws of the State of Texas with its principal office in the City of Greenville, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Texas Refining Company a corporation chartered under the laws of the State of Texas with its principal office in the City of Greenville, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Marshall Wholesale Grocery Company a corporation chartered under the laws of the State of Texas with its principal office in the City of Marshall, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Logan & Whaley, a partnership composed of —— ——, who resides in Marshall, Harrison County, Texas; Rogers-Wade Furniture Company, a corporation chartered under the laws of the State of Texas with its principal office in the City of Paris, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Bettes Hardware Company, a corporation chartered under the laws of the State of Texas with its principal office in the City of Paris, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; Casey-Swasey Company a corporation chartered under the laws of the State of Texas, with its principal office in the City of Fort Worth, Texas, which is represented by —— ——, who resides in said city and upon whom service of citation may be had; A. E. Want, who resides in Fort Worth, Tarrant County, Texas; H. H. Haines, who resides in Galveston, Galveston County, Texas, and who is Traffic Manager of the Galveston Commercial Association; J. A. Morgan, who resides in Houston, Harris County, Texas, and who is Traffic Commissioner of the Houston Chamber of Commerce; G. S. Maxwell, who resides in Dallas, Dallas County, Texas, and who is Traffic Manager of the Dallas Chamber of Commerce; E. P. Byars, who resides in Ft. Worth, Tarrant County, Texas, and
who is Traffic Manager of the Fort Worth Freight Bureau;
77 H. S. L'Hommedieu, who resides in Orange, Orange County, Texas, and who is Traffic Manager of the Orange Commercial Club; and C. A. Bland, who resides in Beaumont, Jefferson County, Texas, and who is Traffic Manager of the Beaumont Chamber of Commerce; that all of said defendants, beginning with the American Steel & Wire Association of Texas and ending with H. S. L'Hommedieu, are shippers and consignees of goods and merchandise, or are employes of shippers and consignees of goods and merchandise and represent their interests in rate matters, moving between points in Texas, and will continue to be such and their shipments which will be made hereafter, will be affected by the application thereto of the rates prescribed by the Interstate Commerce Commission as hereafter stated, in lieu of the lower rates prescribed by the Texas Railroad Commission now and heretofore applicable

to such shipments, are now affected and will continue to be affected by the rates prescribed by the Railroad Commission of Texas in their tariffs hereinafter described, which said tariffs the said Railroad Commission of Texas attempted to suspend or cancel by their Circular No. 5060, styled "General Order Hearing 1573," dated August 28, 1916, hereinafter described, except that some of the rates prescribed in certain of said tariffs, which said Circular No. 5060 undertakes to cancel, hereinafter specifically mentioned will be affected by the orders and rates prescribed by the Interstate Commerce Commission, to become effective November 1, 1916, and said defendants are herein sued on their own account and as representatives of all shippers and consignees whose business and shipments will hereafter be affected by said difference in the rates and by said rates fixed by said tariffs by the Railroad Commission of Texas, which said Commission have undertaken to cancel by said Circular No. 5060, and here plaintiffs aver that the corporations and individuals whose shipments will be so affected, are so numerous that it will be impracticable if not impossible to make them all parties to this suit. Wherefore, plaintiffs pray that this suit proceed against the defendants named, and the Railroad Commission of Texas as representing all parties now or hereafter interested in the subject-matter adversely to the plaintiffs, with leave to any and all other parties at any time to appear and become parties hereto.

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I.

That each of the plaintiffs is a common carrier for hire, engaging in the transportation of freight, classes and commodities between the City of Shreveport, Louisiana, and points in the State of Texas, and between points in the State of Texas; and that the last named defendants beginning with American Steel & Wire Association of Texas, are shippers, doing business in the States of Texas, and from time to time making shipments over the lines of plaintiffs herein.

II.

That this is a suit of a civil nature, where the amount in controversy as to each of plaintiffs exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and arises under the Constitution and Laws of the United States; the acts complained of being void as hereinafter more fully pointed out, because in conflict with Sub-division 3, Section 8, Article 1, of the Constitution of the United States, and the Act to regulate commerce pursuant thereto, and an order of the Interstate Commerce Commission made under the authority of said Act; and because also in conflict with that part of Section 1, of the 14th Amendment of the Constitution, which prohibits the taking of property without due process of law.

III.

That heretofore the Railroad Commission of Louisiana, acting upon request from the Shreveport Chamber of Commerce, caused to

be instituted before the Interstate Commerce Commission a proceeding against The Houston East & West Texas Railway Company, The Texas & Pacific Railway Company, and other defendants, for the purpose of having said Interstate Commerce Commission declare certain rates, regulations, and practices then being applied by the defendants named in said cause between the City of Shreveport and named Texas points, unduly discriminatory against the City of Shreveport and its merchants, jobbers, manufacturers, and others doing business therein, and therefore void. A hearing was had in said cause and on March 11, 1912, the Interstate Commerce Commission made an order therein declaring certain rates, regulations, and practices complained of discriminatory and void, and directing the defendants to remove said discrimination, said order being directed against The Texas & Pacific Railway Company and
79 The Houston East & West Texas Railway Company only.

The two defendants named made, published, and filed with the Interstate Commerce Commission class rates in obedience to the order but contested the same as to commodity rates. The Supreme Court of the United States, however, on June 8, 1914, sustained the order in its application to commodity rates also, and thereupon commodity rates were duly made, published and filed in obedience to it. Later the Railroad Commission of Louisiana filed supplemental petitions in said cause, naming, among others a number of the plaintiffs herein as defendants, and asking that the scope of the order be broadened so that it might apply to railroad companies not named in the original order and to territory not embraced therein; and the Interstate Commerce Commission after a hearing upon said supplemental petitions and full consideration thereof, granted in part the relief prayed for, by order made June 17, 1915; that thereafter, upon application of The Galveston Commercial Association, represented by H. H. Haines, and other commercial organizations, corporations and individuals doing business in the State of Texas, who were not parties, the effective date of said order of June 17, 1915, was postponed and the schedules of rates which had been filed by plaintiffs with the Interstate Commerce Commission were suspended by the Interstate Commerce Commission in order that the said Galveston Commercial Association and others might be heard with respect to all of the issues and matters involved in said proceeding, so instituted by the Railroad Commission of the State of Louisiana.

That in September, 1915, the complainant, the Railroad Commission of Louisiana, filed a new complaint with the Interstate Commerce Commission asking that the terms of the order theretofore made by said Commission, be extended to certain other railroad companies operating in Eastern Texas, not named as defendants in the original and supplemental proceeding, and in October, 1915, said complainant filed a third complaint in which they sought to have the requirements of the order, or orders, theretofore made by the Interstate Commerce Commission extended to all the railroads in Texas. That thereafter, in December, 1915, a further hearing was held by one of the Interstate Commerce Commissioners at

80 Houston, Texas, at which additional evidence was offered and thereafter said proceeding was duly submitted to the Interstate Commerce Commission on April 12, 1916, and that the said Interstate Commerce Commission rendered its decision and report on the 7th day of July, 1916, a copy whereof is hereto attached and marked "Exhibit A," and made a part of this complaint. That in said report and order it was found that various of the rates theretofore charged on shipments moving between Texas points and Shreveport, were unduly discriminatory against shippers and consignees doing business in the said City of Shreveport as compared with the rates contemporaneously charged for similar shipments between points in the State of Texas as will appear from said report and order. That in order to remove said discriminations the Interstate Commerce Commission, by said order and report, fixed a tariff of class rates and various tariffs of commodity rates as will more particularly appear from said report and order, which rates were found by the Interstate Commerce Commission to be reasonable rates and required and ordered the complainants to duly publish and file with the Interstate Commerce Commission to become effective November 1, 1916, tariffs of class rates and of commodity rates no higher than those so fixed in said order and report, and to thereafter apply such rates so published to shipments moving between Shreveport and points in the State of Texas, and thereafter to charge the same rates on similar shipments moving between points in the State of Texas. It is, however, provided, on page 125 of said report, that complainants are not required to disturb existing rates between water competitive points along the Gulf of Mexico or the existing relationship between the rates from and to such Gulf points and the rates from and to Houston, Beaumont, Sabine Pass and other similar basing points. That by said report and order complainants were required on and after November 1, 1916, to observe and use the Western classification as governing shipments between Texas points and Shreveport, and shipments between points in the State of Texas, the effect of which is to require complainants on and after November 1, 1916, to discontinue using the Texas classification prescribed by the Texas Railroad Commission, which applies to intrastate shipments moving between points in the State of Texas. That there are a number of essential and vital differences between said Western classification and said
81 Texas classification and that in order to have a uniform and proper application of the rates so required by said report and order to be filed to become effective November 1, 1916, so that the same rates will apply to shipments of a similar character, moving between points in Texas and between points in Texas and Shreveport for similar distances, it is necessary that only one of said classifications be used.

IV.

That for a number of years the rates applicable to intrastate shipments in Texas prescribed by the Railroad Commission of Texas and in effect are confiscatory and far below compensatory rates to such an extent that complainants have not thereunder for a number of years,

earned a fair return or anything like a fair return on the value of their properties devoted to public use, as will hereinafter more fully appear. Wherefore, about the 8th day of February, 1914, a number of these plaintiffs filed with the Railroad Commission of Texas a petition praying for an increase in rates; that after having first summarily refused to hear said petition, the Railroad Commission of Texas granted a hearing thereon, which they styled "Hearing No. 1573. Increased Revenue. Application of Principal Texas Lines for Increased Rates and Charges," which began in February, 1915, in Dallas, Texas; that at such hearing a number of plaintiffs appearing thereat, after having introduced evidence showing the values of their respective properties and capitalization, earnings, gross, net, etc., etc., offered for the consideration of the Railroad Commission of Texas a proposed tariff of class rates marked "Exhibit No. 1," and thirty-six separate and distinct tariffs of proposed rates on the various commodities therein mentioned, which included practically all of the commodities and freights of any consequence moving between points in the State of Texas, except packing house products; that thereafter the Railroad Commission of Texas caused said proposed tariffs to be printed and by their Circular No. 4751 gave notice to all interested parties that said Commission would, on May 3, 1915, at its office in the City of Austin, take up and consider said above mentioned tariffs and that by and in said Circular 4751, each of said thirty-seven tariffs, being No. 1 to 37, both inclusive, was separately as-
82 signed for hearing, from three to five of said tariffs being assigned for each day; that by subsequent order of said Commission such hearings were postponed to the month of June, 1915, and they continued for a period of about twenty days and when and where a separate hearing was had by said Commission upon each of said proposed tariffs, Exhibits No. 1 to 37, both inclusive.

V.

That commodity tariff No. 2-C, applying on grain, grain products, etc., copy of which is herewith filed, marked "Exhibit 2," and made a part hereof, was issued by said Railroad Commission of Texas, on the 10th day of March, 1916, and became effective on the 10th day of May, 1916; that the same made a substantial increase in rates on minimum carload weights on grain and grain products over and above what was permitted to be charged under commodity tariff No. 2-B, theretofore applying on grain, grain products, etc., that said commodity tariff No. 2-C, was enforced by each of the complainants herein at the time it became effective, and has since that date been applied by each of them to the transportation classifications of the commodities therein described, and is now being so applied.

That Circular No. 4901, applying on coal and lignite, a copy of which is herewith filed, marked "Exhibit 3," and made a part hereof, was issued by said Railroad Commission of Texas on the 14th day of January, 1916, and became effective on the 5th day of February, 1916, and the same made a substantial increase in the minimum carload weight of coal and lignite transported over the lines of

complainants; that the increase in said minimum carload weight was beneficial to complainants and each of them in that it increased the weight that a shipper is required to place in a single car in order to get the benefit of the carload rate; complainants each applied that said tariff to, and made it effective upon, their respective lines, and have continued to transport commodities therein mentioned in accordance with the provisions thereof from the date that it was made effective.

That commodity tariff No. 5-C, applying on wood and tan bark, copy of which is herewith filed, marked "Exhibit 4" and made a part hereof, was issued by said Railroad Commission of Texas on the 10th day of May, 1916; that the same made a substantial in-
83 crease in the charges applying on wood and tan bark by reason of increasing the number of cords that a shipper is required to load in a car in order to get the benefit of the carload rate; that under the provisions of said tariff No. 5-C, complainants and each of them were enabled to earn an increased revenue from the transportation of said commodities, above and beyond what they could and did receive for transporting the same under the tariff theretofore in effect; that complainants each applied said tariff to the transportation of said commodities over their lines from the time it became effective and are now doing so.

That commodity tariff No. 7-B, applying on brick, etc., a copy of which is herewith filed, marked "Exhibit 5," and made a part hereof, was issued by said Railroad Commission of Texas on the 17th day of January, 1916, and became effective on the 8th day of March 1916; that said tariff made substantial increases, both in the rates and minimum carload weights applying on the commodities therein mentioned, over and above what complainants were permitted to charge for the transportation of like commodities under the tariff theretofore in effect, and said tariff No. 7-B, has been applied by each of the complainants to the transportation of the commodities therein described from the time it became effective, and is now being so applied.

That Circular No. 4899, applying on lime, a copy of which is herewith filed, marked "Exhibit 6," and made a part hereof, was issued by said Railroad Company of Texas on the 14th day of January 1916, and became effective on the 5th day of February, 1916, that said tariff made a substantial increase in certain minimum carload weight for lime to be transported over the lines of complainants, and each of them, which was a substantial benefit to complainants, and each of them, because it enabled them to require a larger loading of shippers before they could obtain the benefit of a carload rate.

That commodity tariff No. 15-B applying on canned goods, copy of which is herewith filed, marked "Exhibit 7," and made a part hereof, was issued by said Railroad Commission of Texas on the 14th day of January, 1916, and became effective on the 5th day of February 1916; that the same made a substantial increase, both in the rates and in the minimum carload weight to be charged

84 therefor over and above the rates and minimum carload weight which complainants could charge or demand under the tariff theretofore in effect, and it was thereby materially beneficial to these complainants.

That Circular No. 4900, a copy of which is herewith filed, marked "Exhibit 8," and made a part hereof, was issued by said Railroad Commission of Texas on the 14th day of January, 1916, and became effective on the 5th day of February, 1916, and materially increased the rates and minimum carload weight that complainants were permitted to charge and apply under the tariff theretofore in effect and applying on cartridges, which is the commodity therein mentioned, and Circular No. 4902, also referred to in said circular, was issued by said Railroad Commission of Texas on the 18th day of January 1916, effective on the 10th day of February, 1916, — materially increased the rates on cotton gins and cotton gin machinery and irrigation machinery; that both of said circulars and the rates therein described were put in effect at the date that each of them became effective, by complainants, and have been applied from that date and are now being applied to the transportation of the commodities therein described.

That commodity tariff No. 19-B, applying on barrels and kegs, copy of which is herewith filed, marked "Exhibit 9," and made a part hereof, was issued by said Railroad Commission of Texas on the 5th day of June 1916, effective on the 26th day of June, 1916, and materially increased the rates on the commodities therein described, and was put in effect by each of the complainants herein on the date it became effective, and is now in effect and being observed by complainants.

That commodity tariff No. 20-D, applying on salt, a copy of which is herewith filed, marked "Exhibit 10," and made a part hereof, was issued by said Railroad Commission of Texas, on the 18th day of January, 1916, effective on the 10th day of February, 1916, and materially increased certain minimum carload weights on salt; that such increase enabled the complainants to require shippers to load in a car a larger amount of salt in order to obtain the benefit of carload rates, and was thereby materially beneficial to complainants, and each of them; that said commodity tariff No. 20-D has been applied by each of the complainants since it became effective and is now being so applied.

85 That commodity tariff No. 22-B, applying on stoneware, etc., a copy of which is herewith filed, and marked "Exhibit 11," and made a part hereof, was issued by said Railroad Commission of Texas on the 2nd day of February, 1916, effective on the 25th day of February, 1916, and by reason of the elimination of commodity rates on wooden handles in less than carload lots that were formerly included in this tariff, thus automatically applying to the transportation of these articles the class rates published in General Tariff of Class Rates No. 3, materially increased the rate which complainants and each of them were authorized to charge for the transportation of wooden handles in less than carload lots, above what complainants were permitted to charge for the transportation

thereof under the tariff in force prior thereto; that said tariff No. 22-B, has been applied by the complainants since it became effective and is now being so applied.

That Circular No. 4902, a copy of which is herewith filed, marked "Exhibit 12," and made a part hereof, was issued by said Railroad Commission of Texas on the 18th day of January, 1916, and became effective on the 10th day of February, 1916, cancelling the old rates on cotton gin machinery, compresses and irrigation machinery, and cancelled commodity tariff No. 25-A, and was necessary in connection with Circulars Nos. 4900 and 4902, which amended commodity tariff No. 17-A, that the increased rates resulting from the issuance of said Circular No. 4902 was issued and are now being so applied.

That Circular No. 4972, a copy of which is herewith filed, marked "Exhibit 13," and made a part hereof, was issued by said Railroad Commission of Texas on the 2nd day of May 1916; and became effective on the 22nd day of May, 1916; that said Circular No. 4972 made substantial increases in the rates by cancelling commodity tariff No. 26-A, which provided commodity rates on less than carload lots of pickles, condiments, vinegar, etc., thereby automatically subjecting the transportation of those articles to the class rates in General Tariff of Class Rates No. 3, and said class rates have been applied by the complainants and each of them to the transportation of pickles, condiments, vinegar, etc., in less than carload lots since Circular No. 4972 became effective, and is now being applied.

That commodity tariff No. 27-D, applying on crude and fuel petroleum and asphalt in carloads, a copy of which is herewith filed, marked "Exhibit 14," and made a part hereof, was issued by said Railroad Commission of Texas, on the 17th day of February, 1916, and became effective on the 10th day of March, 1916; that said tariff made substantial increases in the rates applying on the commodities mentioned, over and above what complainants were permitted to charge for the transportation of those commodities prior thereto, and that said tariff No. 27-D has been applied by each of the complainants to the transportation of the commodities therein described from the time it became effective, and is now being so applied.

That commodity tariff No. 31-B, applying on fruits, lemons and vegetables in carload lots and less than carload lots, a copy of which is herewith filed marked "Exhibit 15," and made a part hereof, was issued by said Railroad Commission of Texas on the 6th day of June, 1916, and became effective on the 26th day of June, 1916; that said tariff made substantial increases in the rates applying on the commodities therein mentioned, over and above what complainants were permitted to charge for the transportation of like commodities under the tariff theretofore in effect, and that said tariff No. 31-B has been applied by each of the complainants to the transportation of the commodities therein described from the time it became effective, and is now being so applied.

That commodity tariff No. 33-A, applying on sugar and molasses,

a copy of which is herewith filed, marked "Exhibit 16," and made a part hereof, was issued by said Railroad Commission of Texas on the 6th day of June, 1916, and became effective on the 26th day of June, 1916; that by reason of increasing the minimum carload weight that a shipper is required to load in a single car in order to get the benefit of the carload rate, said tariff No. 33-A made substantial increases in the revenues of the complainants, over and above what accrued to them under the minimum weight, provisions of tariff No. 33, theretofore applying on sugar and molasses; that said commodity tariff No. 33-A, was enforced by each of the complainants at the time it became effective, and has been en-

87 forced by each — the complainants since the time it became effective and is now being so applied.

That Circular No. 4912, applying on cement a copy of which is herewith filed, marked "Exhibit 17," and made a part hereof, was issued by said Railroad Commission of Texas on the 3rd day of February, 1916, and became effective on the 12th day of March, 1916, that by increasing the minimum weight that a shipper is required to load in a single car in order to get the benefit of the carload rate, the revenues of the complainants were substantially increased over and above what accrued to them under the provisions of commodity No. 36, which tariff was amended by Circular No. 4912, and that commodity tariff No. 36, as ammended by Circular 4912, has been applied by each of the complainants to the transportation of the commodities described in that tariff, from the time said amendments became effective, and is now being so applied.

That commodity tariff No. 37-A applying on junk, a copy of which is herewith filed marked "Exhibit 18," and made a part hereof was issued by said Railroad Commission of Texas on the 19th day of January, 1916, and became effective on the 12th day of February, 1916, that said tariff made substantial increases, both in the rates and minimum carload weights on junk, over and above what complainants were permitted to charge under commodity tariff No. 37, theretofore applying on junk; that said commodity tariff No. 37-A has been applied by each of the complainants from the time it became effective and is now being so applied.

That commodity tariff No. 38-A, applying on ice, a copy of which is herewith filed, marked "Exhibit 19," and made a part hereof, was issued by said Railroad Commission of Texas on the 20th day of January, 1916, and became effective on the 15th day of February, 1916; that said tariff made substantial increases, both in rates and minimum carload weights, over and above what complainants were permitted to charge under commodity tariff No. 38, theretofore applying on ice; that said commodity tariff No. 38-A has been applied by complainants since the time it became effective and is now being so applied.

That Circular No. 4900, a copy of which is herewith filed, marked "Exhibit 8," and made a part hereof, amends commodity

88 tariff No. 39, applying on fertilizers; that said Circular No. 4900 was issued by said Railroad Commission of Texas on the 14th day of January, 1916, and *becouse* effective on the 5th day

of February, 1916; that said Circular No. 4900 made substantial increase in the revenues of complainants by increasing the minimum weight that a shipper is required to load in a single car in order to get the benefit of carload rates, over and above the minimum weight theretofore provided in commodity tariff No. 39; that said increased minimum carload weight has been applied by each of the complainants since Circular 4900 became effective, and is now being so applied.

That Circular No. 4996, cancelling commodity tariff No. 40, was issued by said Railroad Commission of Texas on the 29th day of April, 1916, and became effective on the 26th day of June, 1916, a copy of which is herewith filed marked "Exhibit 20," and made a part hereof; that by cancelling said commodity tariff No. 40, which applied on tropical fruits in less than carload lots, said Circular 4996 substantially increased the revenues of complainants by making tropical fruits in less than carload lots subject to the class rates published in General Tariff of Class Rates No. 3; that said class rates have been applied by complainants to the transportation of tropical fruits in less than carload lots since said Circular No. 4996, became effective, and are now being so applied.

That commodity tariff No. 43-A applying on hides, a copy of which is herewith filed, marked "Exhibit 21," and made a part hereof, was issued by said Railroad Commission of Texas on the 19th day of January, 1916, and became effective on the 14th day of February, 1916; that commodity tariff No. 43-A made substantial increases both in rates and minimum carload weights over and above what complainants were permitted to charge under commodity tariff No. 43, theretofore applying on hides; that said commodity tariff No. 43-A has been applied by each of the complainants since the time it became effective, and is now being so applied.

That commodity tariff No. 44-A, applying on turpentine and resin, a copy of which is herewith filed, marked "Exhibit 22," and made a part hereof, was issued by said Railroad Commission of Texas, on the 20th day of January, 1916, and became effective on the 14th day of February, 1916; that said commodity tariff No. 44-A made substantial increases, both in rates and minimum carload weights, over and above what complainants were permitted to charge under commodity tariff No. 44, theretofore applying on turpentine and resin; that said commodity tariff No. 44-A has been applied by each of the complainants since the time that it became effective and is now being so applied.

That commodity tariff No. 45-C, applying on iron and steel rails and fastenings, a copy of which is herewith filed, marked "Exhibit 23," and made a part hereof, was issued by said Railroad Commission of Texas on the 13th day of January, 1916, and became effective on the 10th day of February, 1916, that said commodity tariff No. 45-C, made substantial increases, both in rates and minimum carload weights, over and above what complainants were permitted to charge under commodity tariff No. 45-B, theretofore applying on iron and steel rails and fastenings; that said commodity tariff No.

45-C, has been applied by each of the complainants since the time it became effective and is now being so applied.

That Circular No. 4973, a copy of which is herewith filed, marked "Exhibit 24" and made a part hereof, amended commodity tariff No. 48-A, which applied on iron and steel articles; that said Circular 4973 was issued by said Railroad Commission of Texas on the 2nd day of May, 1916, and became effective on the 22nd day of May, 1916, and made substantial increases in the rates on iron and steel articles, over and above what the complainants were permitted to charge before commodity tariff No. 48-A, as amended by said Circular No. 4973 has been applied by each of the complainants since said Circular No. 4973 became effective, and is now being so applied.

That Circular No. 4911, a copy of which is herewith filed, marked "Exhibit 25," and made a part hereof, was issued by said Railroad Commission of Texas on the 24th day of January, 1916, and became effective on the 18th day of February, 1916; that said Circular No. 4911 cancelled commodity tariff No. 49, which applied on less than carload shipments of woven wire, fence, fence gates and fence stretchers, thereby automatically making the transportation of those articles subject to class rates published in General Tariff of Class Rates No. 3, and thereby substantially increasing the rates applicable to the transportation of these commodities; that said class rates have been applied to the transportation of woven wire fence, fence gates and fence stretchers in less than carload lots since said Circular No. 4911 became effective, and are now being so applied.

That Circular No. 4974, a copy of which is herewith filed, marked "Exhibit 26," and made a part hereof, was issued by said Railroad Commission of Texas on the 2nd day of May, 1916, and became effective on the 22nd day of May, 1916; that said Circular No. 4974, amended the provisions of Railroad Commission of Texas Classification No. 2, applying to ice, to conform to the amendments made in commodity tariff No. 38-A applying on ice and herein previously referred to; that the amendment of Railroad Commission of Texas Classification No. 2, that was made by said Circular No. 4974 was necessary in order to permit the increases made in the rates published in said tariff No. 38-A, and that such increased rates have been applied by each of the complainants since said Circular No. 4974 became effective, and are now being so applied.

Va.

That at the hearing of said case of the Railroad Commission of Louisiana, before the Interstate Commerce Commission on April 12, 1916, the Interstate Commerce Commission requested the carriers to file a list of commodities upon which they were willing to apply for the transportation between Shreveport and Texas stations, rates equivalent to the current Texas rates, or those recently approved by the Railroad Commission of Texas, and in response thereto a number of plaintiffs caused to be filed with the said Interstate Commerce

Commission a list including wool, cement, fertilizer, scrap iron (not junk), lime, salt, sugar, and molasses, logs and fence posts (standard sale), packing house products and fresh meats, canned goods, cartridges, hides in carloads, and less than carloads, oil (crude and fuel, including distillates and creosote), iron, rails and fastenings, and railway supplies and material. The complainants before the Interstate Commerce Commission having expressed satisfaction of the proposed adjustment of rates, by which the rates prescribed by the Railroad Commission of Texas upon the aforesaid articles and commodities were to be charged for similar distances on ship-
91 ments between Shreveport and Texas points, the Interstate Commerce Commission in its said report and order, made no finding with respect to their reasonableness; that the said Commission evidently expected and contemplated that said rates would be charged on shipments between Shreveport and points in Texas, and to avoid discrimination against Shreveport would be charged on such shipments for similar distances between points in the State of Texas.

VI.

That the rates found in said order of Interstate Commerce Commission of July 7, 1916, on the classes and various commodities therein named to be reasonable rates to be charged on shipments moving between Shreveport and points in the State of Texas, while for some distances the same, and in a few instances lower, than rates applicable to such shipments between points in the State of Texas prescribed by the Texas Railroad Commission, are on an average or taken as a whole, very materially higher than the corresponding rates prescribed by the Texas Railroad Commission, and will if applied, as permitted by said report and order of the Interstate Commerce Commission, to shipments moving between points in the State of Texas, yield in revenue to plaintiffs several million dollars per annum more than they would, or could earn under the application to the same business or shipments of the rates prescribed by the Railroad Commission of Texas; that the adoption as required by said order of the Interstate Commerce Commission of Western classification in lieu of the Texas classification for shipments between points in the State of Texas will also increase the annual earnings of plaintiffs very materially over what they otherwise would be. That the rates so found and prescribed by the Interstate Commerce Commission were expressly found by it to be just and reasonable rates for application to shipments between Shreveport and points in the State of Texas; that the necessary effect of said finding is to adjudicate that the corresponding rates established by the Railroad Commission of Texas, where they differed from those so found to be just and reasonable by the Interstate Commerce Commission were unjust and unreasonable rates; that plaintiffs are preparing a tariff of class rates and tariffs of commodity rates in accordance with the rates author-
ised in said report and order of the Interstate Commerce
92 Commission for application on shipments moving between points in the State of Texas and between such points and

Shreveport which will be printed as soon as practicable, and filed with the Interstate Commerce Commission as required by law, as soon as practicable, and not later than September 30th, 1916, which rates when so filed, will become, on and after November 1, 1916, the lawful rates to be charged on shipments moving between points in the State of Texas to the exclusion of the corresponding rates fixed by the Railroad Commission of Texas; that said Interstate Commerce Commission, having found that after having prescribed reasonable rates for application between Shreveport and Texas points it was necessary in order to remove the discriminations against Shreveport complained of by the Railroad Commission of Louisiana, to require that the same rates be charged for similar distances between points in the State of Texas, and the order of said Commission made in accordance with such finding, is authorized as determined by the Supreme Court of the United States in Houston East & West Texas Railway Company vs. United States, 234 U. S., 342.

VII.

That after having established said rates and tariffs, as shown in paragraph V hereof, thereby finding such rates were reasonable and just rates to be charged shippers by the railroad companies of Texas (though plaintiffs allege that many of said rates were much too low), the Railroad Commission of Texas, without notice and without hearing, issued Circular No. 5060, dated August 28, 1916, a true copy whereof is as follows:

"Circular No. 5060.

General Order.

(Hearing No. 1578.)

Austin, Texas, August 28, 1916.

It is hereby ordered by the Railroad Commission of Texas that the following orders and tariffs, including all amendments thereto heretofore prescribed and promulgated by this Commission, be and the same are hereby canceled:

General Tariff of Class Rates No. 4.

Commodity Tariff No. 2-C applying on Grain, Grain products, etc.

Commodity Tariff No. 3-B applying on Cotton Seed and products.

Circular No. 4901 applying on Coal and Lignite.

Commodity Tariff No. 5-C applying on Wood and Tan Bark.

Commodity Tariff No. 7-B applying on Brick, etc.

93 Commodity Tariff No. 9-C applying to Stone, Sand, Gravel, etc.

Circular No. 4899 applying on Lime.

Commodity Tariff No. 15-B applying on Canned Goods.
Circular No. 5020 applying on Packing House Products.
Circulars Nos. 4900 and 4902 amending Commodity Tariff No. 17-A.
Commodity Tariff No. 19-B applying on Barrels and Kegs.
Commodity Tariff No. 20-D applying on Salt.
Commodity Tariff No. 23-B applying on Stoneware, etc.
Circular No. 4902 amending Commodity Tariff No. 25-A.
Circular No. 4972 amending Commodity Tariff No. 26-A.
Commodity Tariff No. 27-D applying on Fuel Petroleum.
Commodity Tariff No. 31-B applying on Fruits, Vegetables, etc.
Commodity Tariff No. 33-A applying on Sugar and Molasses.
Circular No. 4912 applying on Cement.
Commodity Tariff No. 37-A applying on Junk.
Commodity Tariff No. 38-A applying on Ice.
Circular No. 4900 applying on Fertilizers.
Commodity No. 4996 applying on tropical Fruits.
Commodity Tariff No. 43-A applying on Hides, etc.
Commodity Tariff No. 44-A applying on Turpentine and Rosin.
Commodity Tariff No. 45-C applying on Railway Material.
Circular No. 4973 applying on Iron and Steel Articles.
Circular No. 4911 amending Commodity Tariff No. 49.
Circular No. 4974 applying on Ice.

It is further ordered that all tariffs and orders that were superseded by the tariffs and orders that are hereby canceled, be and the same are hereby reinstated.

This order shall take effect September 1st, 1916.

ALLISON MAYFIELD, *Chairman;*
WILLIAM D. WILLIAMS,
EARLE B. MAYFIELD,
Commissioners.

Attest:
[SEAL.] E. R. McLEAN, *Secretary.*

94 I hereby certify that the above is a true and correct copy of Circular No. 5060, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of said Commission, at the City of Austin, this the 28th day of August, 1916.

E. R. McLEAN, *Secretary.*"

That said circular attempts to cancel rates established by the Railroad Commission of Texas and now in effect and being charged by plaintiffs, and attempts to substitute therefor certain other tariffs and rates which had been theretofore cancelled and superseded and were no longer in effect; that said Circular thereby attempts to fix a system of rates to be charged by plaintiffs instead of the rates now in effect, and, therefore, would be equivalent, if put in force, to an order establishing a system of rates, tariffs and schedules, and herein plaintiffs show that said Circular No. 5060, was not made

or issued in accordance with the Statutes of Texas creating and controlling said Railroad Commission of Texas in this; the Statutes require, before rates can be fixed by said Commission, that the railroad companies be given ten days' notice of the time and place where said rates are to be fixed, and an opportunity to be heard, and that thereafter, upon determining what the rates should be said Railroad Commission shall issue tariffs and schedules thereof and deliver same to the railroad companies to become effective at a time to be fixed therein, not less than twenty (20) days. Plaintiffs show that none of said legal requirements were observed by the Railroad Commission of Texas; that no notice or opportunity to be heard was given to plaintiffs before said order was made that said order, as appears from the face thereof purports, to take effect in much less than twenty (20) days from the issuance thereof, and said order does not show on its face what rates it purports to require plaintiffs to charge and was not accompanied by any tariffs or schedules showing what rates it purports to require plaintiffs to charge. Wherefore, plaintiffs aver that because of the non-compliance with such statutory requirements said order is void. That since the issuing of the tariffs and circulars establishing rates, which said Circular No. 5060 undertakes to revoke, there have been no substantial changes in circumstances and conditions which
93 would warrant lesser rates than thereby established, and upon information and belief, plaintiffs aver that the Railroad Commission of Texas do not claim that there has been any such substantial change in circumstances and conditions. Plaintiffs, upon information and belief, allege that the Railroad Commission of Texas issued said Circular No. 5060, because of the issuance by the Interstate Commerce Commission of said order, dated July 7, 1916, (which order, though bearing that date, was not made public by the Interstate Commerce Commission until about the 19th day of August, 1916), and because these plaintiffs, or many of them, had announced that they proposed to comply with said order of July 7, 1916, of the Interstate Commerce Commission, and act under the authority thereof and of the Constitution and Laws of the United States pertaining thereto by publishing with the Interstate Commerce Commission, and charging on or after November 1, 1916, the rates allowed and authorized by said order to be charged between points in Texas and Shreveport, and to be charged on like shipments for like distances between points in the State of Texas. Upon like information and belief plaintiffs aver that the purpose of the Railroad Commission of Texas in issuing said Circular No. 5060 was to attempt to coerce, intimidate and obstruct plaintiffs in complying with said order of the Interstate Commerce Commission of July 7, 1916, and in acting thereunder, as aforesaid, and it was further the purpose of said Railroad Commission of Texas to pecuniarily punish and fine these plaintiffs for their announced purpose of complying with such order of the Interstate Commerce Commission of July 7, 1916, and to act under the authority thereof as aforesaid. That if said Circular No. 5060 is enforced, the effect thereof will be to diminish the present earnings of plaintiffs ap-

proximately in the sum of Seventy-five thousand ($75,000.00), Dollars per month, a substantial part of which loss will accrue to each of plaintiffs, which sum of money they will be deprived of without due process of law contrary to the Federal and State Constitutions.

VIII.

That Plaintiffs now lease and operate, or operate as Receivers, about 80% of the railway mileage of the State of Texas, a table of which mileage, showing the names of the companies and the miles operated respectively by each, taken from the official report of the Railroad Commission of Texas for the year ending June 30th, 1915, (the last report published), is hereto annexed, marked "Exhibit B," and made a part hereof. That all of the lines owned and operated by plaintiffs are situated within the State of Texas except that the Texas & Pacific Railway Company owns and operates about six hundred (600) miles in the States of Louisiana and *Louisiana;* the Gulf, Colorado & Santa Fe Railway Company owns and operates about ninety (90) miles in the State of Oklahoma, and leases and operates about ninety (90) miles in the State of Louisiana; and C. E. Schaff, as Receiver of the Missouri, Kansas & Texas Railway Company of Texas, operates about forty (40) miles in the State of Louisiana.

IX.

Plaintiffs attach hereto, marked "Exhibit C," a copy of all tariffs issued by the Railroad Commission of Texas, now in effect, including those said Commission is undertaking to cancel by said Circular No. 5060. Plaintiffs annex hereto, marked "Exhibit D," a copy of the tariffs and orders which the said Railroad Commission of Texas, by said Circular 5060, undertake to reinstate.

X.

That, as before alleged, even very many of the rates fixed by the Railroad Commission of Texas, and which they have attempted to cancel by said Circular No. 5060, are much too low and lower than corresponding rates fixed by said order of the Commerce Commission of July 7, 1916, and this, although plaintiffs aver many of said rates so fixed by the Interstate Commerce Commission are lower than they should be in order to enable these plaintiffs to earn a fair return on the values of their respective properties devoted to public use.

XI.

Plaintiffs allege that the tariffs and rates that have been established by the Railroad Commission of Texas and which have heretofore been in effect have been, for a number of years much too low to enable plaintiffs to earn a fair return on the fair value of their

respective properties devoted to public use, and the effect of such rates have been from year to year to pro tanto deprive plain-
97 tiffs of their property without due process of law in violation of the Federal and State Constitutions, and that even after the partial relief granted by the said Railroad Commission of Texas by the issuance of the tariffs and circulars described in paragraph V hereof, and which the said Railroad Commission of Texas has undertaken to cancel by its said order No. 5060, dated August 28, 1916, the rates established by the Railroad Commission of Texas and in effect on and prior to August 28, 1916, and now in effect are much too low to enable plaintiffs to earn a fair return on the value of their respective properties devoted to public use, or on the portion thereof fairly attributable to intrastate freight business. Plaintiffs refer to and adopt as a part of this complaint the financial and physical condition of the carriers which appears in said report of Interstate Commerce Commission of July 7, 1916, beginning at page 100 and Appendix C, exhibits 1 to 23 of said report beginning at page 138, and the statements contained in Appendix D of said report beginning at page 168 and ending at page 177. That it appears therefrom (Exhibit No. 1, page 138) that during the fiscal years ended respectively June 30, 1908, 1909, 1910, 1911, 1912, 1913 and 1914, the Texas Railway Companies earned on their capital stock and bonds 2.10%, 4.06%, 3.71%, 3.52%, 2.98%, 3.47%, 1.93%. That it appears therefrom (Exhibit No. 2, p. 140) that on an average of the fiscal year- 1898 to 1914, the Texas Railroad Companies earned on their property investments, or book value an average per annum of 3.19% and that said per cent of earning was for 1910, 3.33%; 1911, 3.17%; 1912, 2.68%; 1913, 3.00%; and 1914, 1.87%. That it appears therefrom (Exhibit No. 3, page 141) that upon the corrected Texas Commission valuations arrived at by adding to the old original Texas Commission valuations, the value or cost of additions and betterments since made, which method makes no allowance for the increase in the value of real estate and right of way, or the increased costs of any items entering into the construction of railroads, the Texas railroads earned during the fiscal years ending June 30, 1910, 1911, 1912, 1913, and 1914, 5.28%, 4.90%, 3.96%, 4.34% and 2.30%. That it appears therefrom (Exhibit No. 6, page 146) that for the five fiscal years ending June 30, 1914, the Texas Railroad Companies earned a return of six per cent,
98 per annum on a valuation of $17,430.00, per mile, and five per cent per annum on a valuation of $20,916.00 per mile, while it appears from the published annual report of the Railroad Commission of Texas for the year 1915, (the last report issued), that the Commission valuations of the Texas railroads average $20,304.00. That such valuations were arrived at by adding to the old original valuations the cost of additions and betterments since made, and in three or four cases only the value of materials, stores and supplies on hand, and an addition of six per cent to represent the value of the properties as going concerns. That with respect to the value of a great majority of the railroads of plaintiffs as shown in said official report for 1915, there was not included the value of

stores and supplies on hand, or said six per cent. If said items had been included, the average value as shown by the method above stated appearing in said Railroad Commission report, would have been much in excess of $26,000.00, per mile, and probably several thousand dollars per mile in excess thereof. That said method of revaluation adopted by said Railroad Commission of Texas, makes no allowance for a vast amount of increase in the value of real estate and right of way and of other items entering into the costs of railroads. In the Southwestern Rate Case, heard before the Interstate Commerce Commission, Mr. R. A. Thompson, then Engineer of the Railroad Commission of Texas, testified that in his opinion the reproduction cost of the Texas railroads as of June 30, 1908, was on an average $30,000.00 per mile. That it appears from Exhibit No. 15, page 154 of said Interstate Commerce Commission report, that after having added to the said $30,000.00 per mile, the cost of additions and betterments since June 30, 1908, the Texas railroads earned on such valuation for the fiscal year 1911, 3.90%; 1912, 3.14%; 1913, 3.60%; and 1914, 2.31%, and earned on an average per annum of seven years 3.38%. That it appears from Exhibit No. 16, page 155 of said report, that upon a valuation of nine of the principal railroads of Texas, which carry the larger part of the traffic of the State, the names of which railroads are shown in such exhibit, made on the basis adopted by the Railroad Commission of Texas for revaluing the Internation- & Great Northern Railway Company in 1912,

that is by taking the old original valuation of the Texas Com-
90 mission and adding thereto costs of additions and betterments (including value of additional weight rate of new rail over old rail taken up whether charged to capital or operating expenses) by adding thereto the average value of material, stores and supplies on hand for five years, and six per cent allowed as representing values of going concern, the said nine principal Texas railroads earned on such value an average rate for the seven fiscal years ending June 30, 1914, 4.87%, which said method of valuation as before explained, makes no allowance for increase in the value of real estate and right of way, and of other items. For details of the financial status, etc., of some of the principal plaintiffs, reference is made to said Appendix D of said report of the Interstate Commerce Commission. The returns for the fiscal year ending June 30, 1916, have not yet been tabulated or published by the Railroad Commission of Texas. That the addition of the figures for the fiscal years for 1915 and 1916 to those shown in said report of the Interstate Commerce Commission would not make any material difference in the general result for an average of years, in the rates of return on values, and that such difference if shown, would merely tend further to show the confiscatory nature of the rates of the Railroad Commission of Texas. That at said hearing, which occurred at Dallas in 1915, a number of these plaintiffs represented thereat, offered for the consideration of the Railroad Commission of Texas a tariff on cotton, a copy whereof is hereto attached, market "Exhibit E,"; that if such tariff were adopted and promulgated by the Railroad Commission of Texas it would increase the earnings of plain-

tiffs about the sum of $500,000.00 per annum; that the rates proposed in said tariff are reasonable rates, correspond with and scale up to, the rates sustained by the Interstate Commerce Commission applicable to shipments of cotton from points in the State of Oklahoma to the port of Galveston, Texas, on which rates a large amount of cotton has been transported every year for a number of years, and which rates from Oklahoma have never been challenged as unreasonable. Plaintiffs are informed and believe that it is not the purpose of the Texas Railroad Commission to grant plaintiffs any increase in the rates on cotton, which is one of the most important commodities of the Texas traffic.

100 That for the purpose of establishing respective values, earnings and rate of return on values attributable to interstate and intrastate business respectively, the lines of the Houston & Texas Central Railroad Company and of the Gulf, Colorado & Santa Fe Railway Company were selected by a committee, representing a large number of plaintiffs, as fairly typical of the transportation and commerce of the State of Texas, and for the fiscal year ending June 30, 1913, there was applied to the business and transportation of said two companies separately the formula for distribution of the above items between state and interstate business, explained, discussed, approved and acted on by the District Court of the Eastern District of Arkansas in Boyce vs. St. Louis & S. F. Ry. Co. 222 Fed. Rep., 539. That the result of the application of such formula was that of the total valuation in dollars of the properties of the Houston & Texas Central Railroad Company devoted to public use, $16,290,322.13, thereof were assigned to intrastate freight business, upon which valuation said fiscal year ending June 30, 1913, earned a return from intrastate business of 00.187 per cent. That the valuation of the railroads of said Company as established by its engineering department amounted to $43,896.00, per mile. That the Engineer of the Railroad Commission of Texas made a check of such valuation and after making such changes and amendments therein as said Engineer considered should be made, the said Engineer thereby established a valuation of $37,458.00 per mile. That under said formula as applied to the business of the Gulf, Colorado & Santa Fe Railway Company in the State of Texas for said fiscal year ending June 30, 1913, it earned on the part of the total valuation established by its engineering department of its lines, then owned and leased in the State of Texas, assigned to intrastate freight business, a return from intrastate freight business during said fiscal years of 1.188%. That the total valuation per mile of said railroads of the Gulf, Colorado & Santa Fe Railway Company so established by its engineering department was $46,270.98. That the Engineer of the Railroad Commission made a check of such valuations and after making such changes and amendments as he thought proper, he established a valuation of $34,577.00 per mile. That in the valuation so established by said

Railroad Commission Engineer, he omitted the value of mat-

101 terial, stores and supplies on hand of the properties as a going concern, both of which items have been allowed by the Railroad Commission of Texas in the valuing of all railroads. That the

addition of such items would increase the value per mile found by the Railroad Commission Engineer of the Houston & Texas Central Railroad Company $3,552.00, and of the Gulf, Colorado & Santa Fe Railway Company $3,226.00.

That on the valuation so established by the said Engineer of the Railroad Commission of Texas, with the value of materials, stores and supplies on hand, the said six per cent added thereto, the Houston & Texas Central Railway Company earned from all of its transportation business, state and interstate, during the five years ending on the 30th day of June, 1914, an average per annum of 2.36%, and the Gulf, Colorado & Santa Fe Railway Company earned on said Engineer's valuation, with the value of materials, stores and supplies on hand, and said six per cent added, from all of its Texas business of every character, state and interstate, an average return for said five years of 2.37% per annum.

XII.

That notwithstanding the fact that the rates established by the Railroad Commission of Texas, as shown in paragraph V hereof, and which said Commission have attempted to cancel by said Circular No. 5060, dated August 28, 1916, have been adjudicated by said Commission as fair and reasonable rates for the shippers to pay and are in many instances much lower than such rates should be, plaintiffs have good grounds to believe and do believe that if they do not obey said Circular No. 5060, dated August 28, 1916, the Railroad Commission of Texas will cause the Attorney General of Texas to institute against plaintiffs suits to recover penalties under the provision of Articles 6669 and 6672, of the Revised Statutes of Texas, and that such Attorney General of Texas will institute suits to recover such penalties and will thus vex, harass and annoy plaintiffs, and subject them to a great multiplicity of suits and cause them to expend large sums of money in the defense of such suits. The penalty prescribed by the first named Article is not less than $500/00 nor more than $1,000.00 for each infraction of the law. That
102 said articles of the Texas Statutes, authorize the recovery by shippers of the penalties therein named on each shipment, and of each of plaintiffs, and as the shipments so to be handled will be many, a multitude and multiplicity of suits will follow, and plaintiffs will be put to the trouble and expense of defending the same, while the validity of said Circular No. 5060 of the Railroad Commission of Texas, dated August 28, 1916, is being contested, unless the relief herein prayed for is granted. That plaintiffs have not put into effect said order of August 28, 1916, and therefore, unless prompt relief is granted them, by a restraining order, they will be at once subjected to the hazard of said multiplicity of suits by the Attorney General of Texas and by shippers. That said Statutes of Texas authorize the recovery of a penalty by shippers on each shipment however small, of not less than $125.00, nor more than $500.00. That plaintiffs have good grounds to believe, and do believe, that when they have acted under said order of the Interstate

Commerce Commission of July 7, 1916, by filing and publishing with said Commission the rates therein provided and authorized, and when said rates become effective on November 1, 1916, said Railroad Commission of Texas will cause the Attorney General of said State to file penalty suits against these plaintiffs, under such Statutes of Texas, for charging the rates so prescribed by the Interstate Commerce Commission, when said rates are in excess of those prescribed for a like service by the Railroad Commission of Texas, and that unless the relief herein prayed for is granted, after November 1, 1916, there will be a multitude and multiplicity of suits filed by shippers against plaintiffs for penalties under said Statutes of Texas, for charging the rates so prescribed by said order of the Interstate Commerce Commission, whenever such rates are in excess of the rates prescribed by the Railroad Commission of Texas, for a like service, whereby plaintiffs will be greatly harassed and annoyed and subjected to a loss of large sums of money in defense of such suits.

XIII.

Plaintiffs aver that the penalties denominated in said Articles 6669, 6671 and 6672, Revised Civil Statutes of Texas for failure to
103 comply with any of the provisions of Chapter 15, Title 115, of said Revised Statutes, or with any of the rules, regulations, charges, or rates prescribed and fixed by the Railroad Commission of Texas, are wholly immoderate, unreasonable, and excessive, and bear no just relation to the causes or matters with respect to which they are denounced, and that said excessive penalties are, as plaintiffs verily believe, prescribed by said articles with the view and intention that the same shall operate as a threat and menace to plaintiffs and to other railway companies, subject to the operation of said chapter, to the end that they may thereby be compelled and coerced into adopting the rates and charges prescribed by said Railroad Commission. That the enforcement of the excessive penalties prescribed by said articles would result in serious loss and damage and bankruptcy to the railway companies subjected thereto, including plaintiffs; and the operation of said articles in this respect is harsh, unreasonable, and confiscatory, and plaintiffs aver that said chapter of said Revised Statutes, constituting the Railroad Commission, in this respect is contrary to, and in violation of, the Constitution of the State of Texas and of the amendment to the Constitution of the United States in that the same denies to plaintiffs and all of them due process of law and the equal protection of the law, and to that provision of the Constitution of Texas which prohibits excessive penalties.

XIV.

That these plaintiffs have a joint and common interest in the subject-matter and cause of action involved in this suit and in the relief herein sought and would be affected in like manner, though in different amounts, by the enforcement of the rates, rules and regu-

lations of the Railroad Commission of Texas, of which complaint is herein made and there is a common question between plaintiffs and each of them and the defendants herein. For further specification hereunder, plaintiffs show that said rates prescribed by the Interstate Commerce Commission as well as the rates prescribed by the Railroad Commission of Texas, apply to movements origination on the railroad of one of plaintiffs and terminating on the railroad of another, and in some cases passing over the intermediate railroad of one of the plaintiffs, and with respect to all such joint rates so apply-
104 ing, plaintiffs are jointly interested in knowing and being protected in the lawful and correct rate which should be charged.

XV.

That plaintiffs have no adequate remedy at law for the wrongs and injuries of which they herein complain, and that they will suffer irreparable injury, unless the defendants are restrained and enjoined as herein prayed for.

In consideration whereof, and for as much as plaintiffs are without remedy in the premises by the strict rules of the common law and can only have relief in a court of equity where matters of this kind are properly cognisable and relievable, plaintiffs pray:

First. That your Honors grant a temporary restraining order to prevent the filing and prosecution of suits by the Railroad Commission of Texas, the Attorney General of Texas, and by individuals and corporations for failure or refusal of plaintiffs to put in effect said Circular No. 5060 of the Railroad Commission of Texas, dated August 28, 1916, until the application for a temporary injunction can be heard.

It is understood, however, that plaintiff, St. Louis, Southwestern Railway Company of Texas, does not join in the above prayer for a temporary restraining order.

Second. That your Honors grant a temporary restraining order to prevent the filing and the prosecution of suits by the Railroad Commission of Texas, the Attorney General of Texas and by individuals and corporations, for the charging by plaintiffs on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commision in said order of July 7, 1916, on shipments moving between points in the State of Texas.

Third. That after due notice your Honors grant a temporary injunction to restrain the defendants, and each of them, and all other officers, individuals, persons and corporations, and his, their or its attorneys, agents, or employes, from claiming or instituting, or causing to be instituted suit or suits, civil or criminal, against plaintiffs, or either or any of them, or their or its officers or agents,
105 for the recovery of any damages, over-charges, penalty, fines, or penalties thereunder, by virtue of Chapter 15, Title 115, of the Revised Civil Statutes of the State of Texas or any other statute thereof, for failure of plaintiffs, or either of them, to obey said Circular No. 5060, of said Railroad Commission of Texas, dated August

28, 1916, or any part thereof, or for failure of plaintiffs, or either of them to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, where said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said order of July 7, 1916, or for the charging by plaintiffs, or any, or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916, and further to restrain the said Railroad Commission of Texas, and said Allison Mayfield, William D. Williams, and Earle B. Mayfield, and their successors in office, from furnishing to any person or persons, copies, certified or otherwise, of any of said tariffs of rates circulars, schedules, rules, orders, and classifications, or of the orders establishing the same, of the Railroad Commission of Texas, against which relief is herein prayed for, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that plaintiffs, or either or any of them, their or its officers and agents have not observed or do not observe and obey said Circular No. 5060 of said Railroad Commission of Texas, dated August 28, 1916, and have not observed, and do not observe and obey said tariffs of rates, circulars, schedules, rules, orders and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916, and from requesting or authorizing the Attorney General or any other officer of the State of Texas to institute any proceedings against plaintiffs or either or any of them, their or its officers and agents, for failure to obey or for disregarding said tariff of 106 rates, circulars, schedules, rules, orders and classifications of said Railroad Commission of Texas herein complained of, including said Circular No. 5060, dated August 28, 1916.

Fourth. That upon final hearing the said injunction be perpetuated.

Fifth. That upon final hearing herein all of the rates, orders and classifications of the Railroad Commission of Texas be declared unreasonable and unjust and confiscatory pro tanto of the properties of plaintiffs, and as pro tanto depriving plaintiffs of their respective properties without due process of law, and that an injunction issue restraining the Railroad Commission of Texas, the Attorney General and all individuals, persons, — corporations from instituting suits of any nature or otherwise attempting to enforce against these plaintiffs, the said rates, orders and classifications of the Railroad Commission of Texas, or any part thereof, and from instituting suits or prosecutions of any nature against these plaintiffs, or any of them, for failure to charge any of the rates prescribed by said Railroad Commission of Texas, or to obey any of such orders or classifications.

Sixth. That plaintiffs have such other and further relief as may be just and equitable.

And May it please your Honors to grant unto plaintiffs a writ of subpoena of the United States of America, issuing out of and under

the seal of this Honorable Court, directed to the said defendants, and each of them, commanding them, and each of them on a day certain therein to be named and under a certain penalty to be and appear before this Honorable Court, then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises, and to stand to, perform, and abide by such order, direction and decree as may be made against them in the premises.

H. M. GARWOOD,
J. W. TERRY,
T. J. FREEMAN,
S. B. DABNEY,
C. C. HUFF,
E. B. PARKER,
E. B. PERKINS,
GEO. THOMPSON,
FRANK ANDREWS,
HIRAM GLASS,
Solicitors for Plaintiffs.

137 G. Waldo, being first duly sworn according to law, says I am Assistant General Freight Agent of The Galveston, Harrisburg and San Antonio Railway Company, The Texas and New Orleans Railroad Company, the Houston & Texas Central Railroad Company and the Houston East & West Texas Railway Company, that I have read over the above and foregoing bill and am cognizant of the matters and allegations therein stated and made, and the same are true.

GENTRY WALDO.

Sworn to and subscribed before me this the 31st day of August, A. D. 1916.

[SEAL.] FAY I. GOSS,
Notary Public within and for Harris County, Texas.

The foregoing application for a temporary injunction and temporary restraining order to remain in force until the hearing of the said application for a temporary injunction can be heard and determined, was presented to me this 2nd day of September, A. D. 1916, and it was shown that the Honorable T. S. Maxey, United States District Judge for the Western District of Texas is absent from said District, and for that reason is unable to hear and act upon said application; and having read and considered the foregoing bill it is ordered that the same be filed and that the application for a hearing for a temporary injunction is granted and such hearing is set down for September 28, 1916, at my chambers in the City of Atlanta, Georgia, at 10 o'clock, A. M. That immediate notice of said hearing of not less than five days shall be given to the Governor and the Attorney General of Texas and to the defendants. And I hereby call

to my assistance at said hearing of said application the Honorable Richard W. Walker, Judge of this Circuit, and the Honorable William T. Newman, District Judge of the Northern District of Georgia.

It being further shown, and it is my opinion, that irreparable loss and damage will result to complainants unless a temporary restraining order is granted it is ordered that such a temporary restraining order is granted, and the Clerk of the District Court for the Western District of Texas is ordered and directed to issue a temporary restraining order as prayed for restraining the Railroad Commission of Texas, the Attorney General and other defendants, and others with notice, from filing and prosecuting suits against the plaintiffs or either of them for failure or refusal to put in effect Circular No. 5060 of the Railroad Commission of Texas dated August 28, 1916, until such time as the application for temporary injunction can be heard and determined, and the said temporary order issued
108 by said Clerk shall restrain and preven- the Railroad Commission of Texas, the Attorney General of Texas and the other defendants hereto, and others with notice, from filing and prosecuting suits against the plaintiffs or either of them for damages or penalties, for charging by them, on and after November 1st, 1916, the rates prescribed and authorized by the Interstate Commerce Commission in its order of July 7, 1916, on shipments moving between points in the State of Texas, and such temporary restraining order as prayed for to remain in force until the hearing and determination of the application for an interlocutory or temporary injunction upon notice as aforesaid.

This September 2, A. D. 1916, at Atlanta, Georgia.

DON A. PARDEE,
U. S. Circuit Judge.

Attached to said original Bill of Complaint were the following exhibits which were introduced in evidence:

(1). A copy of "Texas Lines Tariff 2-B:" the same is not reproduced here because of the following agreed statement as to it:

The Tariff was filed with the Interstate Commerce Commission on September 25, 1916, effective November 1, 1916, and the rates and regulations therein named have been applied and charged by the Plaintiffs since said date (November 1, 1916), except as the same may have been changed by Supplements to said Tariff with respect to Interstate shipments between Shreveport, Louisiana, and all points in Texas, and with respect to all shipments between points in Texas; such rates are now being charged by Plaintiffs, and they propose to continue to charge the same.

The interstate common-point rates named in said Tariff are substantially identical with the maxima class and commodity rates prescribed in the order of the Interstate Commerce Commission of date July 7, 1916, involved in this cause, the differences, where the same exist, not affecting the issues in this proceeding.

109 The Tariff as filed and published names rates for application to shipments between points within Texas, within common-point territory, which rates, insofar at least as the matter

involved in this proceeding are concerned, are identical with the interstate common-point rates therein named for equal distances, said intrastate rates being made applicable to all shipments of articles moving under Class Rates, and all Commodities named in said order of the Interstate Commerce Commission, between all points within common-point territory in the State of Texas, except in a few instances where "rates between Texas points have been depressed by reason of water competition along the Gulf of Mexico or waters contiguous thereto."

The Tariff defines Differential Territory as the same is defined in said order of the Interstate Commerce Commission, and provides Differential Rates, for classes and commodities, for application to shipments moving between Shreveport, Louisiana, and points in Texas in Differential Territory, substantially identical with the maxima Differential Rates prescribed in said order of the Interstate Commerce Commission, the difference between such rates as named in the Tariff and as named by the Interstate Commerce Commission, if any, not affecting any issue in this proceeding; said Tariff also names Differential Rates on classes and the same commodities applicable to all shipments thereof moving between all points in Texas within said Differential Territory and between points within said Differential Territory and points in common-point Territory in Texas, which Differential Rates so named for such application to intrastate shipments are identical in
110 volume with the Differential Rates named for such interstate application, and the same are made applicable and are charged on such intrastate shipments regardless of the total length of the haul and regardless of the distance such shipments move within Differential Territory,—that is to say, by way of illustration:—If a shipment moves between two points in Texas within Differential Territory, a distance of fifty miles, the standard rate for fifty miles is charged, plus the Differential Rate for fifty miles; or, if a shipment moves between two points in Texas, one within Differential Territory and twenty miles west of the Differential Line, the other thirty miles east of the Differential Line, the standard rate for fifty miles is charged, plus the Differential Rate for twenty miles.

111 *Report of the Interstate Commerce Commission.*

(2). A copy of the Report of the Interstate Commerce Commission, of date July 7th, 1916, accompanying the aforesaid order, was attached to said Original Bill of Complaint and was introduced in evidence by Plaintiffs, the same reading as follows:

"The Railroad Commission of Louisiana, hereinafter referred to as complainants by direction of the legislature of that State brought the original proceeding in Docket No. 3918, alleging that rates for the transportation of freight from Shreveport to points in eastern Texas were unreasonable and unduly prejudicial as compared with rates on like competing Texas points to destinations in Texas. In our report thereon, Railroad Commission of La. v. St. L. S. W.

Ry. Co., 23 I. C. C., 31 we found that the class rates maintained by the Texas & Pacific Company, Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company from Shreveport to certain points in Texas were unjust and unreasonable and that for the future rates should not exceed those there found just and reasonable. Our order required the establishment of such reasonable class rates to specified destinations in Texas. It further required the three carriers named above to 'abstain from exacting any higher rates for the transportation of any article' from Shreveport to Dallas, Texas, and points intermediate via the line of the Texas & Pacific, and from Shreveport to Houston, Tex., and points intermediate via the lines of the Houston, East & West Texas and the Houston & Shreveport, 'than are contemporaneously exacted for the transportation of such articles from Dallas or Houston for an equal distance toward said Shreveport.' From the latter portion of that order, the defendant carriers appealed to the Commerce Court where the order was upheld in Texas & P. Ry. Co., United States, 205 Fed. 380. That court's decision was sustained by the Supreme Court of the United States in Houston & Texas Ry. v. United States, 234 U. S. 342.

"Upon petition by complainants for additional relief a supplemental hearing was had and on June 17, 1915, we made a supplemental report and order, Railroad Commission of Louisiana v. St. L. S. W. Ry. Co., 34 I. C. C. 472.

"This order, hereinafter, called the supplemental order, which applied to many carriers, not parties to the original proceed-
112 ing, required, among other things, that all the carriers named therein should establish on or before September 15, 1915, and maintain for single-line application from Shreveport to all points in that part of Texas on and east of a line drawn through Gainesville, Fort Worth, and Waco, Tex., and thence via the Brazos River to the Gulf of Mexico, the territory so described being termed 'eastern Texas' in the supplemental report, class rates no higher than a certain mileage scale there found reasonable. These carriers were authorized to construct rates for joint line application by adding certain amounts to the scale prescribed for use over single lines. By 'single line,' as used in the supplemental report and in this report, is meant one line of railroad, or two or more lines of railroad under the same management and control; by 'joint line,' is meant two or more lines of railroad not under the same management and control. The order also required the carriers there defendant to cease and desist on or before the date stated and thereafter to abstain from charging, demanding, collecting, or receiving rates for the transportation of any commodity from Shreveport to destiantions in eastern Texas higher than those contemporaneously applied to the transportation of such commodity for an equal distance from points in eastern Texas toward Shreveport, or higher, distance considered, than the corresponding class rates named in the order.

"In order to remove what was found to be unjust discrimination the carriers there defendant were further required to establish on or before September 15, 1915, and thereafter to maintain and ap-

ply to the transportation of traffic from points in eastern Texas toward Shreveport the provisions of the current western classification in effect at the time the traffic moves.

"In alleged compliance with the supplemental order the carriers there defendant published in various tariffs a schedule of class rates to become effective September 18, 1915. Upon protest of interested parties representing various cities, commercial organizations, and industries in the State of Texas, we postponed until further notice the effective date of the supplemental order and by appropriate order 41 I. C. C. suspended the schedules containing the proposed rates until July 13, 1916. The proceeding had under this suspension is known as Investigation and Suspension Docket No. 710.

On June 28, 1916 under special permission of the Commis-
113 sion, tariffs were filed, effective July 10, 1917, canceling the suspended tariffs.

"By tariffs intended to become effective October 15, 1915 certain carriers proposed increased class rates from Galveston and other Texas ports to Shreveport. Upon protest by interested parties the operation of these increased rates was suspended by appropriate orders until August 12, 1916. The proceeding with respect thereto is known as Investigation and Suspension Docket No. 729.

"Following our supplemental report and order, the complainants in September, 1915, filed a new complaint, docketed as No. 8290, asking us to extend the terms of that order to certain other roads operating in eastern Texas not named as defendants in the original or supplemental proceeding. In October, 1915, complainants filed a third complaint docketed as No. 8418, in which they seek to have the requirements of this supplemental order extended to all the railroads in Texas.

"By agreement of counsel for all interested parties the five proceedings above named were consolidated for hearing and argument and will be disposed of in one report. Here, as before, the Railroad Commission of the State of Texas, hereinafter called the Texas commission, was represented at the hearing but entered no appearance. Four appendices are made part of this report and will be referred to as occasion demands.

"In general, the issue in the consolidated cases may be divided into three parts: (1) The reasonableness of defendant's class and commodity rates between Shreveport and points in Texas; (2) whether or not such class and commodity rates are unduly prejudicial to Shreveport as compared with rates maintained by defendants for the transportation of like property for similar distance within the state of Texas; and (3) whether or not the application of the provisions of the western classification to the transportation of property between Shreveport and points in Texas while contemporaneously applying the provisions of the Texas classification to the transportation of like property within the state of Texas results in undue prejudice to Shreveport.

"We proceed to a consideration of the evidence.

"By Stipulation on the record the evidence submitted in Docket, No. 7628, Dallas Chamber of Commerce, Freight Bureau

114 Department, v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, and that submitted during the years 1914 and 1915 in a proceeding before the Texas commission, were made part of the record in this proceeding.

"The hearings before the Texas Commission were on an application by the Texas railroads for authority to increase their rates for transportation within the state of Texas.

"A number of exhibits were filed by complainants in support of their allegation that the rates between Shreveport and points in western as well as in eastern Texas are unreasonable and unduly prejudicial to Shreveport in comparison with the rates on the same commodities for like distance between Texas points.

"The following table of class rates shows (1) the present rates from Shreveport to representative points in Western Texas; (2) the intrastate rates to such points for like distances in common-point territory in Texas; (3) the lowest combination of rates that could be constructed by taking the rates from Shreveport to Waskom, the first station in Texas west of Shreveport on the Texas & Pacific Railway, and adding thereto the Texas state rate from Waskom to destination; (4) the rates prescribed by us in our supplemental order for like distances. The destination points selected are on the Texas & Pacific Railway. Throughout this report rates are stated in cents per 100 pounds except as otherwise specified.

From Shreveport to—

	Miles	1	2	3	4	5	A	B	C	D	E
Weatherford	254										
(1)		105	92	74	71	54	58	51	40	28	21
(2)		80	72	60	58	44	46	40	34	23	17
(3)		98	88	74	70	..	..	..	..	..	..
(4)		82	73	63	59	44	45	50	34	24	18
Santo	285										
(1)		105	92	74	71	54	58	51	40	28	21
(2)		80	72	60	58	44	46	40	34	23	17
(3)		98	88	74	70	..	..	..	..	..	..
(4)		86	77	66	61	45	47	42	36	25	20
Wise	311										
(1)		105	92	74	71	54	58	51	40	28	21
(2)		80	72	60	58	44	46	40	34	23	17
(3)		98	88	74	70	..	..	..	..	..	..
(4)		94	82	70	66	47	48	44	37	27	21
Cisco	336										
(1)		105	92	74	71	54	58	51	40	28	21
(2)		80	72	60	58	44	46	40	34	23	17
(3)		98	88	74	70	..	..	..	..	..	..
(4)		96	85	72	68	49	50	46	38	29	23

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Miles.	1	2	3	4	5	A	B	C	D	E
Baird 363										
(1)	105	92	74	71	54	58	51	40	28	21
(2)	80	72	60	58	44	46	40	34	23	17
(3)	98	88	74	70	..	..	..	..	..	..
(4)	102	88	74	65	50	51	47	39	21	26
Merkel 400										
(1)	105	92	74	71	54	58	51	40	28	21
(2)	80	72	60	58	44	46	40	34	23	17
(3)	98	88	74	70	..	..	..	..	..	..
(4)	102	88	74	66	50	51	47	39	31	26
Roscoe 433										
(1)	105	92	74	71	54	58	51	40	28	21
(2)	80	72	60	58	44	46	40	34	23	17
(3)	98	88	74	70	..	..	..	..	..	..
(4)	106	81	76	66	52	53	49	40	32	28
Stanton 511										
(1)	119	105	86	79	61	66	58	47	36	27
(2)	80	72	60	58	44	46	40	34	23	17
(3)	98	88	74	70	..	..	..	..	..	..
(4)	109	93	77	67	53	54	50	41	33	29

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Douro 561										
(1)	129	110	94	89	66	72	62	50	39	20
(2)	84	75	62	59	45	47	41	35	24	18
(3)	102	91	76	71	..	..	..	..	..	..
(4)	114	98	82	71	56	58	52	42	34	30
Monahans 586										
(1)	135	116	100	95	70	75	62	51	40	32
(2)	86	77	64	61	46	49	42	36	25	19
(3)	104	98	78	73	..	..	..	..	..	..
(4)	116	100	84	73	58	60	54	44	35	31
Barstow 617										
(1)	145	125	105	95	74	78	62	52	42	33
(2)	89	80	67	64	52	49	44	37	26	19
(3)	107	96	81	76	..	..	..	..	..	..
(4)	119	103	87	76	60	62	56	46	37	32
Toyah 153										
(1)	153	136	110	95	76	82	62	52	42	33
(2)	92	83	70	51	54	46	39	27	67	30
(3)	110	99	84	79	..	..	..	..	..	..
(4)	122	106	90	79	61	63	57	47	38	33

	Miles.	1	2	3	4	5	A	B	C	D	
Van Horn	711										
(1)		153	136	110	95	76	82	62	52	42	
(2)		92	83	70	67	51	46	39	27	54	
(3)		110	99	84	79	..	..	..	..	..	..
(4)		128	110	90	89	61	66	60	45	41	
El Paso	837										
(1)		153	136	110	95	76	82	62	52	42	
(2)		105	95	81	78	58	61	53	46	34	
(3)		123	111	95	90	..	..	..	..	..	..
(4)		121	114	97	86	66	68	62	52	42	

"The contrast here shown between the class rates from Shreveport to points in Texas and the intrastate rates in Texas for like distances although significant and striking, are much less pronounced than in the case of commodity rates. Thus, rates on certain commodities from Shreveport to various points in Texas are compared with rates on the same commodities for comparable distances in Texas. These rates, although limited in number, are illustrative of the general situation.

"In the following tables 'J' indicates joint line and 'S' single line rate application.

116 Glass Bottles to Amarillo, Tex.

From—	Miles.	C.L.	L.C.L.	From—	Miles.	C.L.	L.C.L.
Fort Worth ..	S335	39	60	Houston	J584	29	60
Wichita Falls .	S222	29	59	Waco	J423	29	60
Dallas	J366	39	60	Shreveport ...	J552	40	92
San Antonio..	J592	29	60				

Window Glass to Corpus Christi, Tex.

From—	Miles.	C.L.	L.C.L.	From—	Miles.	C.L.	L.C.L.
Galveston	J230	15	61	Dallas	J406	15	58
Houston	J223	15	58	San Antonio..	S149	15	47
Wichita Falls.	J513	15	58	Shreveport ...	J477	24	71

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Tight Wooden Barrels to Gainesville and Amarillo, Tex.

From—	To Gainesville.		To Amarillo.	
	Miles.	C. L.	Miles.	C. L.
Dallas	S89	9	J366	19
Houston	J324	18	J594	22½
Navasota	S297	15	J535	22½
Galveston	S411	18	J642	22½
Shreveport	S262	39	J556	36

Saddlery and Harness to Marfa, Tex.

From—	Miles.	Class 1	Class 2	Class 3	Class 4	Leather, L. C. L.
Paris	J622	104	95	81	78	66
Dallas	J523	104	95	81	78	66
Waco	J494	104	95	81	78	66
San Antonio	S423	98	89	76	73	60
Houston	S633	104	95	81	78	66
Shreveport	J711	142	122	108	102	107

The carload rates on other commodities from points in Texas to Shreveport are compared with the rates on the same commodities for comparable distance in Texas.

Cabbages from Brownsville, Tex.

To—	Miles.	C. L.	Minimum weight (tons).	Refrigeration charge.
Texarkana	J665	28	10	$35.00
Pittsburg	J607	28	10	35.00
Marshall	J598	28	10	35.00
Timpson	J525	28	10	35.00
Shreveport	J589	49	12	61.50

117 Onions from Laredo, Tex.

To—	Miles.	C. L.	Minimum weight (tons).
Texarkana	J582	20	10
Pittsburg	J522	20	10
Marshall	J515	20	10
Timpson	J511	20	10
Shreveport	J555	52	12

Potatoes from Harlingen, Tex.

To—	Miles.	C. L.	Minimum weight (tons).
Texarkana	J640	26	10
Pittsburg	J582	26	10
Marshall	J573	26	10
Timpson	J500	26	10
Shreveport	J564	44	12

Watermelons from Falfurrias, Tex.

To—	Miles.	C. L.	Minimum weight (tons)
Texarkana	J508	21	10
Pittsburg	J509	21	10
Marshall	J501	21	10
Timpson	J438	21	10
Shreveport	J502	42	12

Wheat and Oats from Amarillo, Tex.

To—	Miles.	Wheat.	Oats.
Marshall	J513	15	12½
Texarkana	J499	15	12½
Nacogdoches	J534	15	12½
Houston	J594	15	12½
Shreveport	J552	32	25½

Peanuts from Sweetwater, Tex.

To—	Miles.	C. L.
Denison	S303	15
Cleburne	J211	15
Texarkana	S447	15
Shreveport	S425	14

"During the last two years one dealer has made shipments
118 from Shreveport of most of the manufactured articles named to many of these cities and towns in western Texas, and other dealers at Shreveport have received shipments of cabbages, onions, potatoes, watermelons, wheat, oats, wool, and peanuts from the western Texas points. Similar contrasts in class and commodity rates might be multiplied almost indefinitely.

"The scale of mileage class rates from Shreveport to destination in eastern Texas, hereinafter called the Shreveport scale, prescribed by our supplemental order, corresponded almost exactly with the Texas intrastate rates are blanketed for distances greater than 245 miles to destinations in Texas intrastate common-point territory. These blanket rates are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	80	72	62	58	43	45	40	34	24	19

"For distances in excess of 245 miles the Shreveport scale is higher than the Texas scale and reaches a maximum, for distances over 400 miles and not over 450 miles, of—

Class:	1	2	3	4	5	A	B	C	D	E
Cents	106	91	76	66	52	53	49	40	32	25

"Our supplemental order provided that for joint line application the rate might be higher than those in the scale for the corresponding class by the following amounts:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	8	7	6	5	4	4	4	3	2	2

"The rates so made were not to exceed those fixed as maxima for distances not greater than 450 miles.

"The carriers in their petition to the Texas commission for increase in intrastate class rates sought authority to apply a scale which was practically the Shreveport scale upon intrastate traffic in Texas. The hearing at which this scale was presented was held in Dallas in 1914.

"Subsequent to that hearing the carriers entered upon an investigation of the terminal and station costs of handling less-than-carload shipments, and the results of their investigation, covering, a period of six months ending December 31, 1914, were presented at a further hearing in June, 1915. These figures included the wages of employees, light, and heat at stations, station repairs, other station expenses, and the switching of cars.

119 "Certain stations were selected at Dallas, Fort Worth, San Antonio, Austin, Cuero, Sherman, Flatonio, Howe, and Hammond as being representative. Items of wages were assigned directly to less-than-carload or carload traffic where possible. All items of expense chargeable to both less-than-carload and carload shipments which could not be directly assigned to one or the other were allocated between the two on the percentage that the number of each bore to the total of both. For example if the less-than-carload and carload shipments, respectively, at any station are to each other in number as 9 is to 1, any expense at that station which could not be directly assigned to one or the other was allocated to less-than-carload and carload traffic, respectively in the proportion of 9 to 1.

"The result of this test indicated that these known costs per ton of 2,000 pounds for handling less-than-carload traffic were:

Station wages	$1.075
Miscellaneous station expenses	.086
Switching expenses	.61
Total expenses per ton	$1.77

"This includes only one handling. If the expenses at the other end of the route is as great, the actual average expense of forwarding and receiving less-than-carload shipments at these Texas Stations is computed at $3.54 per ton, or 17.7 cents per 100 pounds.

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"The less-than carload shipments forwarded from the Dallas and Houston stations of the Sunset Central Lines during the month of October, 1915, were divided in weight between the first four classes as follows:

	Weight per cent.
First Class	18
Second Class	8
Third Class	28
Fourth Class	46
Total	100

"If the test so made be taken as typical, the tonnage importance of the classes is in the following order: Fourth, third, first, and second. With these figures as a basis the carriers earnestly urge that the class rates applied in Texas common-point territory to such traffic
120 for distances of 30 miles or less are not sufficient to pay the cost of handling at stations. For distances of 30 miles the present rates are:

Class:	1	2	3	4
Cents	20	18	16	14

"Receipts upon 100 pounds of average less-than-carload shipments moving 30 miles would therefore be, on—

	Cents.
First Class (18 pounds)	3.60
Second Class (8 pounds)	1.44
Third Class (28 pounds)	4.48
Fourth Class (46 pounds)	6.44
Total receipts on 100 pounds	15.96

"The present rates for 40 miles are as follows:

Class:	1	2	3	4
Cents	24	22	20	18

"The receipts per 100 pounds of average less-than-carload shipments moving 40 miles computed in like manner would be 19.96 cents.

"The costs above outlined do not include anything for the road haul, or for taxes, loss and damage, interest upon investment, or a number of other expenses incident to the railroad business.

"There are certain practical reasons why rates applied under any given classification should bear a percentage relation one to another. In the establishment of class rates from eastern defined territory to the New Mexico points in Corporation Commission of New Mexico v. Ry. Co., 34 I. C. C., 292 and from certain northern Pacific ports to points in Washington, Oregon, Idaho, and Montana in Portland Chamber of Commerce v. O. R. R. & N. Co., 21 I. C. C., 640, we prescribed maxima bearing the following percentage relation:

Class:	1	2	3	4
Percentage	100	85	70	60

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"With this relation between the classes, and following the Dallas Houston test of relative weights, the lowest rates on this traffic that will produce revenue equal to the station costs so shown are:

121 Class:	1	2	3	4
Cents	24	22	18	16

"As computed these rates would yield a revenue of 18.48 cents on 100 pounds of average traffic. The proposition contemplates with respect to the fourth class rates an increase of 1 cent per 100 pounds—

For each 4 miles up to and including 90 miles;
For each 5 miles over 90 and not over 150 miles;
For each 10 miles over 150 and not over 270 miles;
For each 15 miles over 270 and not over 300 miles;
For each 20 miles over 300 and not over 400 miles;
For each 25 miles over 400 and not over 450 miles;

"A fourth-class rate of 70 cents is thus reached, to be applied for all distances in Texas intrastate common-point territory in excess of 450 miles and rates upon the higher classes are constructed by maintaining a percentage relation between them and the fourth-class rate. Taking that rate as 100 per cent, the proposed percentages would be:

Class:	1	2	3	4
Percentage	150	135	110	100

"It is proposed to construct the rates upon the lower classes so as to bear the following percentage relation to the fourth-class rate:

Class:	5	A	B	C	D	E
Percentage	70	76	64	56	42	36

"Or, taking the first class rate as 100 per cent, the other classes would be related thereto as follows:

Class:	1	2	3	4	5	A	B	C	D	E
Percentage	100	90	73	67	57	51	43	37	28	24

"The fifth-class rate is, the carload rate which moves the largest amount of carload traffic and the fourth-class rate as shown moves by far the largest amount of less-than-carload traffic. In the scale proposed by the carriers the fifth-class rate begins with 7 cents for a distance of 10 miles or less reaches 28 cents at 100 miles, 38 cents at 200 miles, 44 cents and a maximum of 54 cents at 450 miles.

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"While the evidence with reference to the station costs was presented to the Texas commission, the carriers did not at that time pro-

pose a definite scale of rates based upon the figures. This scale was proposed at the hearing before us in December 1915, and met with considerable objection and criticism from some of the protestants who also asserted that the computations concerning these station costs were erroneous in certain particulars. It does not appear, however, that the errors pointed out in the computations lead to any serious errors in the results.

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While we are not disposed to accept all of the claims of the carriers with reference to these station costs, for the reason, among others, that the computation made as to the freight stations examined may not represent the average station costs throughout the state of Texas, due consideration must be given to the data submitted. They are strongly indicative that the scale of rates known as the Shreveport scale is too low for short hauls in the territory to which it is intended to apply.

In the proceedings before the Texas commission, as already stated, the carriers urged the adoption for intrastate application in Texas of the Shreveport scale or its equivalent, which corresponds closely with the scale applied between Texas and Oklahoma. The views of many shippers were expressed and disclosed a diversity of opinion. Many expressed willingness that the particular traffic in which they were interested should bear its proportion of whatever reasonable increase in rates the Texas commission might consider the carriers entitled to receive. The general expression was against any drastic or severe change in the measure of the rates or methods of rate making

Only the representative of the city of Galveston presented a definite plan for constructing class rates. He proposed to the Texas commission for intrastate application, and to this Commission for application between Shreveport and Texas points, a scale of class rates constructed as follows:

For all distances in common-point territory in Texas add to the present Texas intrastate rates the following arbitraries:

For distances—	1	2	3	4	5	A	B	C	D	E
245 miles or less.....	3	3	3	1½	1½	1½	2	1	1	1
123										
Not greater than 250 and not less than 245.....	3	3	4	2½	2½	2½	3	2	2	2
255 and not less than 250	4	4	5	3½	3½	3½	4	3	3	3
260 and not less than 255	5	4	5	3½	3½	3½	4	3	3	3
265 and not less than 260	6	5	5	3½	3½	3½	4	3	3	3
270 and not less than 265	7	5	6	3½	3½	3½	5	3	3	3
275 and not less than 270	8	6	6	4½	4½	4½	5	4	4	4
280 and not less than 275	9	6	6	4½	4½	4½	5	4	4	4
285 and not less than 280	10	7	7	4½	4½	4½	5	4	4	4
290 and not less than 285	11	8	7	5½	5½	5½	6	5	5	5
295 and not less than 290	12	9	8	5½	5½	5½	6	5	5	5
300 and not less than 295	13	10	8	6½	6½	6½	7	5	5	5
Over 300	13	10	8	6½	6½	6½	7	5	5	5

The effect of this scale would be to increase the rates for distances less than 245 miles by approximately 7.3 per cent on classes 1, 2, and 3; 5.4 per cent on classes 4, 5, and A; 9 per cent on class B; and 7 per cent on classes C, D, and E. So large a percentage of the class traffic moves on class 4, 5 or A rates that the actual increase in revenue for these shorter hauls would probably be in the neighborhood of 6 per cent. For hauls between 245 and 300 miles the increases proposed average 7.3 per cent on the first three classes; 6.6 per cent on classes 4, 5, and A; 8.7 per cent on class B, and 10 per cent on classes C, D and E. For hauls exceeding 300 miles the percentages of increase are double those last stated.

In response to a suggestion by the Commission at the argument, and with the consent of counsel for all parties, the carriers filed a list of commodities upon which they are willing to apply, for the transportation between Shreveport and Texas stations, rates equivalent to the current Texas rates or those recently approved by the Texas Commission. The list includes wool, cement, fertilizers, scrap iron (not junk), lime, salt, sugar and molasses, logs and fence posts (standard scale), packing-house products and fresh meats, canned goods, cartridges, hides in carloads and less than carloads, oil (crude and fuel, including distillates and creosote), iron rails and fastenings, and railway supplies and material. Complainants have expressed satisfaction with the proposed adjustment of rates on these commodities, and we shall make no finding with respect to their reasonableness.

124 *abd* packing-house products in Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C., 160; 23 I. C. C., 656. In the latter case we had occasion to establish a set of mileage rates on cattle, hogs, sheep, and goats between Texas points and points in the states north of Texas. Those so established on beef cattle correspond closely with the present rates in Texas for distances of 250 miles or less, but the interstate rates are uniformly higher for distances greater than 250 miles, as shown by the following table:

Rates on Beef Cattle to Texas Points.

Miles.	Present Texas rates.	Proposed Texas rates.	Interstate rates, 23 I. C. C., 160.	Miles.	Present Texas rates.	Proposed Texas rates.	Interstate rates, I. C. C., 160.
10..	6	8	5½	200..	17½	20	17½
20..	7	8	6	250..	18¾	22½	20
30..	8	9	6½	300..	20	25	22½
40..	9	10	7½	350..	21¼	27½	25
50..	10	11	8¾	400..	22½	30	27½
60..	10½	12	9½	500..	25	35	32
70..	11	13	10½	600..	27½	38	36
80..	11½	14	11½	700..	30	40½	40
90..	12	14½	12	800..	32½	42½	44
100..	12½	15	12½	900..	32½	43	48
150..	15	17½	15				

The rates applied for the transportation of horses and mules in carloads between Shreveport and Texas points are compared with the present intrastate rates in Texas over one-line hauls, and with the rates for which the carriers have sought authority from the Texas commission:

Rates on Horses and Mules.

Miles.	Present Texas intrastate rates.	Proposed Texas intrastate rates.	Rates to Shreveport from Texas points.	Miles.	Present Texas intrastate rates.	Proposed Texas intrastate rates.	Rates to Shreveport from Texas points.
10..	9	12	....	200..	20	24	29 59 42
20..	10½	12	....	250..	21½	26½	
30..	11½	13	....	300..	23	29	
40..	12½	14	....	350..	24½	31½	
50..	13½	15	....	400..	26	34	
60..	14	16	....	500..	29	39	
70..	14½	17	....	600..	32	42	44 59 59
80..	15	18	....	700..	35	44½	
90..	15½	18½	....	800..	37	46½	
100..	16	19	....	900..	37	47	
150..	18	21½	29 to 42				

125 Under our decision in Investigation of Alleged Unreasonable rates on Meats, supra, the carriers were authorized to construct rates applying over two or more lines not under the same management or control for hauls less than 500 miles by adding 2½ cents to the rates for single-line hauls of corresponding length. In the 1915 Western Rate Advance Case, 35 I. C. C., 497, the carriers sought increases in the interstate rates in southwestern territory, but the proposed increased rates were found not to have been justified, it being remarked by us that the interstate rates in this territory were generally higher than the intrastate rates. The Texas carriers are now urging that the rates prescribed by us in Investigation of Alleged Unreasonable Rates on Meats, supra, for short hauls are too low.

In support of their contention it is urged that the value of stock has greatly increased since that time, and that live stock is one of the highest grades of carload traffic, that the carriers are called upon to handle.

In handling other kinds of carload traffic the cars furnished by the carriers must be reasonably clean, placed at the loading point, and picked up when loaded at the shipper's convenience. In the case of live stock the cars must be cleaned, disinfected, and bedded at the expense of the carrier, run to the loading point, often in special trains, and an engine crew retained there to see that the cars are loaded. For the time consumed in this service at the loading point the train crew is paid double time.

Damage claims constitute another item of heavy expense, the records of the Sunset Central lines showing that for the year ended June 30, 1913, the damage claims paid amounted to 15.9 per cent and in 1914 to 16 per cent of the total gross revenue derived from the traffic.

In order to reduce this item a service is given superior to that afforded or required for any other traffic. Stock trains, whether regular or special, are required to make 17 miles an hour or bet-
126 ter, including all terminal delays. These trains often make more than 18 miles an hour on long runs. Tables introduced by the Sunset Central lines showed that a total of 75 special stock trains averaged 18.4 miles per hour.

It was also shown that in the movement of stock trains over short distances a large part of the revenue from transportation was consumed in the expense of the special service and labor. On the Galveston, Harrisburg & San Antonio Railway the freight revenue from live-stock trains averaged $3.03 per train-mile, as against a general average for all freight trains, including stock, of $3.15 per train-mile, and on the Houston & Texas Central the average stock train earned $2.21 per train-mile against an average of all freight trains, including stock, of $3.01 per train-mile. On the Houston, East & West Texas Railroad the average stock train earned $1.98 per train-mile; the average of all freight trains $2.59 per train-mile. On the Texas & Northeastern the average stock train earned $3.08 per train-mile, while the average of all freight trains earned $3.79 per train-mile.

The St. Louis, Brownsville & Mexico for the year 1912 paid out for loss and damage claims on cattle 23.93 per cent of its entire cattle revenue; for the year 1913, 10.17 per cent, and for the year 1914, 23.71 per cent, and for the three years, out of a total revenue of $321,948, claims were paid aggregating $60,774.

Cotton Seed and Products.

The present rates on these commodities between Shreveport and Texas points are not made on any mileage scale, and the rates vary with the different lines. They are usually higher than the rates for like distances in Texas, and in many cases are higher than the increased rates proposed by the carriers for intrastate application in Texas. This situation is illustrated by the following table:

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Commodity.	Distance, miles.	Rate to Shreveport from Texas points.	Texas rate.	
			Present.	Proposed.
Cotton seed	100	12 to 16½	10	10
Do.	200	14 to 20	14	14
Do.	300	22½	17½	18
Do. (1)		25	17½	21
Cottonseed and meal	200	14 to 16	14	15
Do.	300	20	17½	20
Do. (1)		27½	17½	23
Cottonseed hulls	100	7½ to 10	6½	7½
Do.	200	9 to 14	9	10
Do. (1)		15½ to 27½	10	13
Cottonseed oil	100	(6)	11	15
Do.	200	(6)	17	20
Do.	300	(6)	18	24

1. Maximum.
2. From Shreveport to Texas common points.
3. Applicable to all distances over 350 miles.
4. Applicable to all distances over 280 miles.
5. Applicable to all distances over 240 miles.
6. Rate from Shreveport to nearly all points in Texas interstate common-point territory is 20 cents.

The rates proposed by the carriers for application in Texas and between Shreveport and Texas points correspond closely with the rates on cottonseed cake and meal and cottonseed hulls from Oklahoma points to points in Texas, discussed in Cotton Seed to Texas, 25 I. C. C., 237.

Rates on Unshelled Peanuts, Flour, Wheat, Corn, Hay, and Alalogous Articles.

The present rates in Texas, which have been authorized by the Texas commission in response to petitions of the carriers, reach

maxima at 200 miles of 15 cents on corn, 17½ cents on wheat and hay, 20 cents on flour. The rates on wheat also apply on peanuts, unshelled, and on a large variety of seed, including alfalfa, clover, flax, grass hemp, millet and sorghum. The carriers urge in support of hauled distances in excess of 500 miles *for* the maximum rate which the Texas commission has authorized for 200 miles or more; and that a large percentage of the traffix is interline and the revenue must be divided between two or more lines. Many comparisons are instituted between *two or more lines. Many comparisons are institutes between* the rates in Texas and the rates from and to other territories. For example, it is stated that the rates
128 from Oklahoma producing points to Ft. Worth, a distance of approximately 200 miles, are as follows: Flour 30½ cents, wheat 25½ cents, corn 21½ cents, as compared with the rates proposed by the carriers for like hauls in Texas of 18½ cents on flour, 16 cents on wheat, 13 cents on corn. From Oklahoma producing points to Houston, a distance of about 450 miles, the rates are: Flour 38½, wheat 33½, corn 29, while the rates proposed for like distances in Texas are: Flour 22½ cents, wheat 20 cents, and corn 17½ cents. From Kansas producing territory to northern Texas, a distance of about 300 miles, rates are: Flour 34½, wheat 29½, corn 26½, while the proposed Texas rates are flour 21 cents, wheat 18½ and corn 15½ cents. It is contended that the rates on unshelled peanuts should be higher than on wheat because of lighter loading.

The following table shows, with respect to certain commodities which move within Texas on class rates up to certain distances beyond which the rates are blanketed, the distances at which the rates reach the maximum, the present maximum rates, the present rates from Shreveport to Texas common points, rates proposed by the carriers to the Texas commission as maxima within Texas, and the rates authorized by the Texas commission on such commodities as had received consideration at the time these cases were submitted:

Commodity.	Class.	Distance at which maximum rate is made.	Present maximum rate.	Present rate from Shreveport to Texas common points.	Rates proposed by carriers to Railroad Commission.
		Miles.			
Agricultural implements except hand implements	A	220	43	55	46
Bagging and ties	5	48	18	24½	24
Binder twine	A	120	31	41	46
Cans, cases and pails (tin)	4	168	50	71	48
Baskets	B	102	25	51	40
Chocolate raw materials	3	75	33	74	38
Dry goods	4	188	55	.....	.....
Window glass	5	36	15	24	24
Glassware (table)	4	128	43	71	45
Horse and mule shoes	5	144	33	46	36
Wrapping paper	5	230	44	44	47
Printing paper	5	78	22	49	30
Tin articles	4	156	49	71	66
Wire and nails	5	90	25	35	32
Door locks	4	225	58	92	55
Tools, files and rasps	4	225	58	71	61

129 1. Houston hearing proposed 38 cents between Shreveport and Texas common points.

2. Houston hearing proposed 48 cents between Shreveport and Texas common points.

3. No rate applicable.

4. Houston hearing proposed 55 cents between Shreveport and Texas common points.

5. Houston hearing proposed 28 cents between Shreveport and Texas common points.

6. Houston hearing proposed 61 cents between Shreveport and Texas common points.

In Appendix B are tables showing in parallel columns interstate and intrastate rates on certain important commodities upon which at the time these cases were submitted the Texas commission had granted in part the increases in intrastate rates sought by the carriers. We are informed that increases were granted subsequently by the

Texas commission on classes and on other commodities, but these are not here of record and do not appear in the appendix.

Financial and Physical Condition of Carriers.

The evidence of the carriers relating to their financial and physical condition was presented in part by a statistician for all of the Texas railways who dealt with these roads by groups, and in part by individual roads through their accounting, traffic, and other officers. This evidence, which is reviewed in the following pages, purports to show the following conditions:

The total amount of the capitalization of railroads covered in carriers' exhibits, represented by the stocks and bonds on June 30, 1914, was:

Stocks	$145,577,055
Bonds	394,426,821
Total capitalization	540,003,876
Other indebtedness	73,763,690

The "total liabilities" of Texas railroads as of June 30, 1914, according to the Texas commission's report for the year 1914, were $585,216,911. This covered stocks, bonds, equipment, trust obligations, and current and other liabilities. The railroad properties reported on include the Texas & Pacific Railway in other states as well as in Texas; the Gulf, Colorado & Santa Fe Railway in Oklahoma and Louisiana; and the Missouri, Kansas & Texas Railway of Texas in Louisiana to Shreveport.

130 The "other indebtedness" of these roads seems to have arisen largely from the fact that when they were unable to pay the interest on their bonds this interest has been paid by affiliated roads operating outside of Texas. For example, the Missouri, Kansas & Texas appears to act as the sponsor and guarantor for the Missouri, Kansas & Texas of Texas; the St. Louis Southwestern for the St. Louis Southwestern of Texas; and the Atchison, Topeka & Santa Fe for the Gulf, Colorado & Santa Fe.

According to this evidence the net operating income of all the Texas roads for the year ending June 30, 1914, was $11,868,071, representing a return on their bonds of approximately 3 per cent; on the capital stock and bonds of 2.2 per cent; and on the total stocks, bonds and other indebtedness of 1.93 per cent. The report of the Texas commission for 1914 shows a greater "income from operation" than the net operating income here shown, but this is because the taxes and rentals have not been deducted. The earnings, both gross and net, for the year 1914 were below normal. Taking all the seven years 1908 to 1914, the net revenue from operation has been sufficient to pay a return upon the stocks and bonds of 3.14 per cent, and was sufficient to pay 4.44 per cent on the bonded indebtedness. In Appendix C are reproduced the carriers' exhibits dealing with the Texas roads as a whole. They are referred to in this report by number.

Exhibit No. 2 is intended to show that while the alleged property investment in these roads has steadily increased from $389,656,262 in 1898 to $634,373,325 in 1914, or 62 per cent, the net income available for the payment of interest or dividends has not correspondingly increased. The average alleged investment for the years 1898, 1899 and 1900 was $392,421,719 and the average net income before deducting interest for the same years was $11,943,488. The average alleged investment for the years 1912, 1913 and 1914 was $608,982,225, and the average net income before deducting interest for the same years was $15,261,057. This would show an increase in investment of 55 per cent and in net income before deducting interest of 28 per cent. The increase in net income of the three
131 years 1912, 1913 and 1914 over the three years 1898, 1899 and 1900 was $3,317,568. The increase in investment was $216,560,506. The increase in income was 1.53 per cent of the increase in investment. There may be some doubt about the actual investment in these properties prior to 1894, but the record of subsequent investment for the succeeding 20 years has been under the jurisdiction of the Texas commission, and is said to have been made in strict accordance with the requirements of that body.

In Exhibit No. 3 are shown the operating returns of the Texas roads each year from 1904 to 1914 and the valuations of the properties, as made by the Texas commission, with subsequent readjustments, allowances, additions and betterments. The year 1914 is acknowledged to have been an abnormal year, but comparing the year 1913, during which the net revenue from operation was greater than in any year since 1909, with the year 1904, it appears that the increase in investment was $179,820,097, the increase in net income before deducting interest $4,265,648, and the return on increase in investment 2.37 per cent.

From Exhibit No. 4 it seems that during the seven years 1908 to 1914 the net income before deducting interest was insufficient to pay the interest on the funded debt accruing in four of these years, 1908, 1912, 1913 and 1914, and that the corporate loss of these roads during these seven years was $13,943,263. The year 1913 was a better year for these roads than the average, and yet during that year they suffered a net corporate loss of $1,601,378.

According to Exhibit No. 5, the net income before deducting interest per mile of road for the five years 1905 to 1909, available to meet interest charges, make additions and betterments, and pay dividends, was sufficient to pay a return of 6 per cent per annum on a valuation per mile of road of $22,005. During the five years 1910 to 1914, inclusive, the net income before deducting interest has been sufficient to pay a return of 6 per cent per annum on a valuation of $17,430 per mile, or a return of 5 per cent on a valuation of $20,916 per mile.

132 Exhibit No. 7 shows that the taxes of these roads, including the mileage in Oklahoma, Louisiana, and Arkansas owned by the Gulf, Colorado & Santa Fe; Missouri, Kansas & Texas of Texas; and the Texas & Pacific have increased from $1,171,332 in 1900 to $2,776,791 in 1909, and $5,058,269 in 1914.

Exhibits Nos. 8 and 9 show that personal injury payments made by these Texas roads have increased from $1,018,637 in 1900 to $2,905,398 in 1914, and that while such payments averaged 3.275 cents per revenue train-mile in 1900, they average 5.813 cents per revenue train-mile in 1914.

Exhibit No. 11-A indicates that the personal injury payment and loss and damage payments of the Texas roads for the years 1909 to 1913 were 3½ to 4 per cent of their total railway operating revenues and Exhibit 11-B indicates that the total of personal injury payments and loss and damage payments for the year 1914 were $5,644,231, or 5.163 per cent of the total railway operating revenue for that year.

Exhibit No. 17 is an abstract of the income account of 32 of the Texas railroads for the year ending June 30, 1915, which shows that after paying operating expenses, taxes and interest upon funded and unfunded debt, hire of equipment, rent for leased roads, and other expenses, the net result is a deficit of $6,619,553. Twenty-three of these 32 roads were unable to pay in full, out of the year's earnings, the interest upon their funded and unfunded debt, and 19 were unable to pay the interest upon the funded debt. This refers not alone to the smaller and unimportant roads in Texas, but includes the Galveston, Harrisburg & San Antonio which leads the list with a deficit of $1,122,693, and the International & Great Northern, which is second with a deficit of $1,121,397.

These statements and exhibits, concerning which we know of no dispute, are indicative that there is something wrong with the Texas railroads. There are approximately 15,600 miles of railroads upon which the funded debt in 1914 was $394,426,821, or
133 $25,271 per mile. The interest on this debt for that year was approximately $16,300,000, and the net income before deducting interest lacked over $4,000,000 of being sufficient to pay this interest.

While Exhibit 17, above referred to, shows something of the financial condition of 32 of these roads for the fiscal year 1915, the particular condition of individual roads is given in much greater detail by the officers of the roads themselves. In Appendix D the evidence submitted with reference to the profitableness of the business on the Gulf, Colorado & Santa Fe; Texas & Pacific; Missouri, Kansas & Texas of Texas; Fort Worth & Denver City; San Antonio & Aransas Pass; Houston & Texas Central; Beaumont, Sour Lake & Western; St. Louis & San Francisco of Texas; and Fort Worth & Rio Grande is reviewed. The three first named had in 1914 the largest total railway operating revenues of any roads in the state, being more than $11,000,000 in each instance. The Fort Worth & Denver City, Houston & Texas Central, and the San Antonio & Aransas Pass had total railway operating revenues ranging from $3,700,000 to $6,000,000. The Beaumont, Sour Lake & Western, Fort Worth & Rio Grande and St. Louis & San Francisco of Texas had total railway operating revenues in each instance in excess of $500,000 per year, and not exceeding $1,145,000.

These nine roads, including the entire lines of the Gulf, Colorado

& Santa Fe, Texas & Pacific, and Missouri, Kansas & Texas, in Texas, had total railway operating revenues in 1915 of about $66,721,000.

Their operating expenses were $50,628,000; net revenue from operation, $15,093,000; taxes $2,600,000; and net operating income after payment of taxes, $12,493,000.

They received for rental of equipment $371,000, but paid out for rental of equipment $3,448,000. The sum left for interest on investment after paying the rental of equipment was $9,416,000. They received for lease of other roads approximately $38,000, but paid out $1,381,000. The interest paid on their funded debt
134 was $8,268,000, and on the unfunded debt $396,000.

The Texas & Pacific paid no interest on its second mortgage bonds, and the Gulf, Colorado & Santa Fe paid no interest on its certificates of indebtedness. Various other miscellaneous items of expense brought the total deficit of these roads for 1915 to $758,000.

There was available from the operating revenues and other income of these roads for the payment of interest upon bonds, lease of roads, and dividends, as before stated, approximately $9,416,000. This was the result of the operation of a little more than 8,000 miles of line and amounts to $1,177 per mile, or enough to pay 6 per cent interest on a valuation of $19,616 per mile.

The assessed value of such portions of these nine roads as are in the state of Texas, in 1915, was $27,328 per mile, and the Texas commission's valuation is $26,769 per mile.

We are impressed with the following facts as to the Texas railroads:

First. The amount paid out by these roads for rental of equipment is an unusually large proportion of their revenues. This is said to be due to lack of funds available for the purchase of equipment.

Second. The personal injury claims paid were relatively large and constitute a material drain. They amounted to $2,905,398 in 1914, 5.813 cents for every revenue train-mile of service performed and 2.47 per cent of the total railway operating revenue. This percentage is much higher than that paid by some of these lines upon the revenues earned in adjoining states, and is far in excess of the proportion paid by other lines operating in contiguous territory. Thus, the amounts paid by the Atchison, Topeka & Santa Fe in 1914, on account of injuries to persons, as shown by its annual report to this Commission were a little less than one-fifth of 1 per cent of its total railway operating revenues for the year.

135 Third. Loss and damage to freight, damage to property, and damage to stock on right of way on the Texas roads amounted to $2,720,226 during the fiscal year 1914, or 2.32 per cent of the total railway operating revenue for the year. The amount so paid by Texas roads greatly exceeds that paid by other lines operating in adjoining states. For example, the proportion of total railway operating revenue expended for these three items by the Atchison, Topeka & Santa Fe Railway for the fiscal year 1914, as shown by its annual report to this Commission, was 0.67 of 1 per cent.

Fourth. The taxes paid in 1914 amounted to $5,068,289, or 4.33

per cent of the total railway operating revenues for that year. Taxes for all the years shown from 1908 to 1914 have quite steadily increased. This might be expected, since the values of the properties have been increasing. The total railway operating revenues, however, have not kept pace with the rising tide of taxes. The percentages of those revenues which have been required to pay the taxes were 2.36 per cent in 1900, 2.87 per cent in 1909, and 4.32 per cent in 1914.

Fifth. The exhibits of average loading of cars in Texas as compared with the minima required instrastate in Texas shows that many of these commodities can be, and generally are, loaded to and above the minima required by the interstate tariffs. Without doubt some of these intrastate minima were established at a time when the Texas cities had not reached their present development, and were then looked upon as a commercial necessity. These cities have largely increased in size and distributing power during the last 20 years, and the average size and capacity of freight cars have also increased.

Sixth. The net corporate income was, for the fiscal year:

1908	loss ..	$6,294,760
1909	gain ..	3,278,347
1910	gain ..	1,594,519
1911	gain ..	507,108
1912	loss ..	3,282,493
1913	loss ..	1,601,378
1914	loss ..	8,144,597
1915	loss ..	6,619,553

136 The 1915 report includes only 32 roads and embraces the entire lines of the Texas & Pacific, Gulf, Colorado & Santa Fe, and Missouri, Kansas & Texas of Texas, respectively. The aggregate net corporate loss of these 32 roads during the last eight years is over $20,000,000. This does not take account of the interest on the second mortgage income bonds of the Texas & Pacific, which, as already said, amounts to more than $1,100,000 annually and has not been paid. If this interest had been paid or become a charge against the property, the deficit shown would have been correspondingly larger.

The arrangements of these Texas lines with affiliated interstate lines for divisions and for the exchange of traffic and equipment are said to be satisfactory to the Texas lines and appear to be fair to them.

From the record before us we are unable to tell in all instances by whom the losses indicated have been borne. Some of the bonds and certificates of indebtedness of these roads are held by other railroad companies operating through adjoining states.

Classifications.

One of the exhibits filed by the protestants in this case contrasts the principal rules of the Texas classification with corresponding rules in the western, as follows:

137 Rules in Texas Classification.

Rule 5. Unless otherwise specified, minimum weight of 20,000 pounds applies on articles rated third class or higher, 24,000 pounds on articles rated fourth class or lower.

Rule 6. Less-than-carload rates will apply regardless of quantity when no carload rating is named. See Rule 26-A below for mixed carloads.

Rule 7. Provision for carload rating on excess over one or more carloads, regardless of minimum weight, except will not apply on live stock, lumber, articles taking lumber rates, sash, doors, blinds, scrap iron, junk, and articles loaded in refrigerator or tank cars.

Rule 12-A. Allows 500 pounds for blocks and 1,000 pounds for racks, no total allowance of over 1,000 pounds, when furnished by shippers for securing freight loaded on flat or gondola cars.

Rule 16. Provides minimum of 5,000 pounds at first-class rate on articles loaded on open cars except on ranks, cisterns, and storm or *b*egetable cellars set up, which take a minimum of 3,000 pounds.

Rule 17. Provides for one-half rates on return shipments.

Rule 26-A. Makes provision for mixed carloads at the rating and minimum weight applicable on the highest rated article in the car.

Rule 30. Less-than-carload shipments, unless otherwise provided for, classified higher than first class, take a rate of one-half cent per mile per cwt., minimum 30 cents per 100 pounds for each line.

Rule 33. Provides for stop-over privilege at charge of $5 per car for each stop, not over three stops allowed on any single car, on following articles: Beer to unload, three stops; beer packages empty returned to brewers to load; bottled soda water and coca cola to unload; cottonseed cake for grinding; cottonseed oil for refining; earthenware to unload; eggs to finish loading; fresh fruit to load or unload; tropical fruits to unload; junk to load; ice to unload; melons to load or unload; mineral water to unload; poultry to load or unload; soda water and coca cola empties to load; vegetables to load or unload.

Rule- in Western Classification.

No similar rule in western. Minima carried in specific terms, generally 30,000 pounds or higher.

Rule 11. Same as rule 6 of Texas classification, except western also carries provision that no two or more articles shall be carried in mixed carloads at carload rate, unless specifically provided in individual items.

Rule 24. Same provision but applies only on articles subject to minimum weight of 30,000 pounds or more. Excepts all articles excepted by Texas classification and in addition furniture, bulk freight, freight requiring heated or ventilated cars and freight loaded in cars especially prepared either by shippers or carriers.

138 Rule 27. Allows only 500 pounds for blocks, racks, standards, stripe, stakes, or similar bracing, dunnage, or supports.

Rule 20. All articles loaded on open cars take a minimum of 5,000 pounds, at first-class rate, no exceptions.

No provision for one-half rate on return shipment. Full tariff rate applies.

No provision for mixed car lots in western classification except as carried in specific terms.

No similar provision in western. Articles classified higher than first class take classification ratings.

No provision in western classification for stop-over privileges.

In addition to the above rules, there are numerous items wherein the use of the western classification would greatly increase the rates now governed by the Texas classification. Patings and descriptions in the western are more strict and specific *then* in the Texas classification, as evidenced by the following table taken from complainants' exhibits:

	Pages of classification matter.	Items in classification.	Average number of items per page.
Western	249	6,945	27.89
Texas	129	7,645	59.26

Articles in Western Classification, by Classes.

4 t 1	11	A	492
3½ t 1	6	B	164
3 t 1	76	C	121
2½ t 1	22	D	110
D 1	638	E	94
1½ t 1	473	½ of 4	5
1	2,305		
2	1,844		
3	1,825		
4	1,531		
5	1,002	Total	10,719

139 Articles in Texas Classification, by Classes.

4 t 1	7	A	227
3½ t 1	0	B	115
3 t 1	47	C	90
2½ t 1	14	D	152
D 1	428	E	70
1½ t 1	321	½ of 4	18
1	1,381	120 per cent of Class C	1
2	1,178	160 per cent of Class E	1
3	1,182	½ of class E	4
4	1,120		
5	587	Total	6,006

The record shows that the Texas classification is more liberal in providing carload mixtures than the western classification which applies on shipments from and to Shreveport.

The carload minima for many articles are lower in the Texas than in the western classification. This is illustrated by the carload minimum weights for cabbages, onions, potatoes, and watermelons of 20,000 pounds under the Texas classification and 24,000 pounds or higher under the western. There appear to be no transportation conditions requiring the application of different and lower minima on intrastate shipments.

Conclusions.

In the consideration of rates between Shreveport and Texas interstate common-point territory account should be taken of the actual distance traversed. The most westerly cities in that common-point territory are Corpus Christi, on the St. Louis, Brownsville & Mexico and San Antonio & Aransas Pass railways; Devine, on the International & Great Northern; San Angelo, on the Gulf, Colorado & Santa Fe and Kansas City, Mexico & Orient; Big Springs, on the Texas & Pacific; and Quanah, on the Fort Worth & Denver City.

From Shreveport it is 477 miles to Corpus Christi via the Houston, East & West Texas and the St. Louis, Brownsville & Mexico railways; 438 miles to Devine via the Texas & Pacific and the
140 International & Great Northern; 490 miles to Big Springs via the Texas & Pacific; 501 miles to San Angelo via the Texas & Pacific and Kansas City, Mexico & Orient; and 413 miles to Quanah via the Texas & Pacific and the Fort Worth & Denver City railways. While other routes, longer or shorter, might be found, the haul from Shreveport to points in Texas interstate common-point territory seldom exceeds 500 miles.

In our former reports in No. 3918, supra, we used the Texas intrastate rates as a guide for the construction of rates between Shreveport and Texas points for distances of 245 miles or less. It seems clear from the present record that the class rates prescribed by us are too low for hauls of 60 miles or less.

We have had occasion recently to propose tentative rates on classes between Shreveport on the one hand and Memphis and St. Louis on the other, and have there suggested a maximum mileage scale. The rates in this scale bear the following percentage relation to first class:

Class:	1	2	3	4	5	A	B	C	D	E
Percentage	100	85	70	60	50	52	40	35	30	25

Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C., 224; Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co., 39 I. C. C., 249. In the Missouri River-Nebraska cases, 40 I. C. C., 201, for reasons there stated, we used rates which bear the following percentage relation:

Class:	1	2	3	4	5	A	B	C	D	E
Percentage	100	85	70	60	45	50	35	30	25	17

Class Rates.

We are of opinion and find that defendants' present class rates between Shreveport and points in Texas are unjust and unreasonable. It is our judgmet, based upon all of the facts before us, that the following scale of class rates, for single-line application, which we find to be just and reasonable rates, should be observed as maximum rates for the transportation of property between Shreveport and Texas interstate common-point territory. This scale follows, in general, the percentage relations adopted in the Memphis Freight Bureau and Marshall and Jefferson Cases, supra.

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Miles.	1	2	3	4	5	A	B	C	D	E
10 and less	23	19	16	14	10	10	8	7	6	5
20 and over 10..	27	22	19	16	12	13	10	9	8	6
30 and over 20..	30	25	21	18	14	16	12	10	9	7
40 and over 30..	33	28	23	20	16	17	13	11	10	8
50 and over 40..	37	31	26	22	18	19	15	13	11	9
60 and over 50..	40	34	28	24	20	21	16	14	12	10
70 and over 60..	43	37	30	26	21	22	17	15	13	11
80 and over 70..	47	40	33	28	23	24	19	16	14	12
90 and over 80..	50	43	35	30	25	26	20	18	15	12
100 and over 90..	53	45	37	32	27	28	21	19	16	13
110 and over 100..	57	48	40	34	29	30	23	20	17	14
120 and over 110..	60	51	42	36	30	31	24	21	18	15
130 and over 120..	63	54	44	38	31	33	25	22	19	16
140 and over 130..	67	57	47	40	33	35	27	23	20	17
150 and over 140..	70	60	49	42	35	36	28	25	21	18
175 and over 150..	75	64	53	45	38	39	30	26	22	19
200 and over 175..	80	68	56	48	40	42	32	28	24	20
225 and over 200..	85	72	59	51	43	44	34	30	26	21
250 and over 225..	90	77	63	54	45	47	36	32	27	22
300 and over 250..	100	85	70	60	50	52	40	35	30	25
350 and over 300..	103	87	72	62	52	54	41	36	31	26
400 and over 350..	106	90	74	64	53	55	42	37	32	26
Over 400	106	90	74	64	53	55	42	37	32	26

Class rates for joint line application may be made by adding to the rates prescribed in the above table the following amounts, in cents per 100 pounds:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	8	7	6	5	4	4	4	3	2	2

Rates so made, however, must not exceed the following in cents per 100 pounds for distances of 400 miles or less:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	106	90	74	64	53	55	42	37	32	28

It should be noted that for many years Texas has been divided, with respect to traffic moving on class rates, into "common-point territory" and "differential territory." To the former it has been the practice to state class rates on a mileage basis, blanketed beyond a specified distance. This situation was created by the car-
142 riers, and we are dealing with conditions as we find them.

Differentials.

The western boundary of Texas common-point territory on interstate traffic coincides in part with the western boundary of that territory as it applies on intrastate traffic. In all instances in which these two boundaries do not coincide, the boundary of the intrastate territory is farther west than that of the interstate. For example, Laredo and Amarillo are both west of interstate but within intrastate common-point territory. The territory in Texas lying west of these boundaries is known as differential territory.

Interstate rates from or to points in other states to or from points in differential territory are constructed by adding differentials to the interstate rates to and from interstate common-point territory. These differentials, except at competitive points, are subject to wide variation. The intrastate rates between points in differential territory on the one hand and common-point territory on the other are constructed by adding to the maximum rates allowed in common-point territory certain authorized differentials varying with the haul in differential territory. These differentials reach the following maxima, in cents per 100 pounds, for a haul of 260 miles or more in differential territory:

Classes:	1	2	3	4	5	A	B	C	D	E
Cents	25	23	21	20	14	15	13	12	11	10

The Texas intrastate common-point class rates reach a maximum at 245 miles and are blanketed beyond. Intrastate traffic originating or terminating near the western boundary of common-point territory that moves into or out of differential territory must move a distance of 245 miles before adding the authorized differentials. For example, traffic originating 200 miles east of this boundary and moving west must move into differential territory a distance of at least 45 miles

before adding differentials to the maximum common-point
143 rates.

The complainants urge that if the differentials applied on interstate and intrastate traffic are the same, the inclusion of Laredo, Amarillo, and other points within intrastate common-point territory, while excluding them on interstate traffic will result in undue prejudice to Shreveport. For example, the reasonable maximum first class rate which we have hereinbefore authorized for single-line application from Shreveport to points in interstate common-point territory is $1.06.

Amarillo lies approximately 150 miles west of the western boundary of interstate common-point territory. For a haul of 150 miles in differential territory the Texas commission authorized a differential of 15 cents first class. If we should adopt the same differential, the first-class rate from Shreveport to Amarillo would be $1.21 for a single-line haul and $1.29 for a joint line haul. If the one-line or joint line rates from points in Texas to Amarillo are less than the corresponding rates from Shreveport for like distances, undue prejudice to Shreveport will result.

We are of opinion and find that defendant's present class rates between Shreveport and points in Texas west of the present western boundary of Texas interstate common-point territory are and for the future will be unjust and unreasonable to the extent that such rates exceed those named as maxima in the above-prescribed mileage scale by more than the differentials shown in the following table, corresponding to hauls in differential territory:

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Miles.	1	2	3	4	5	A	B	C	D	E
20 and less	2	2	1	1	1	1	1	1	1	1
30 and over 20 ..	3	2	1	1	1	1	1	1	1	1
40 and over 30 ..	4	3	2	1	1	1	1	1	1	1
50 and over 40 ..	5	4	3	2	1	2	1	1	1	1
60 and over 50 ..	6	5	4	3	2	3	2	2	2	2
70 and over 60 ..	7	6	5	4	3	4	2	2	2	2
80 and over 70 ..	8	7	6	5	4	5	3	2	2	2
90 and over 80 ..	9	8	7	6	5	6	4	3	3	3
100 and over 90 ..	10	9	8	7	6	7	5	4	3	3
110 and over 100 ..	11	10	9	8	7	8	6	5	4	3
120 and over 110 ..	12	11	10	9	7	8	6	5	4	3
130 and over 120 ..	13	12	11	10	8	9	7	6	5	4
140 and over 130 ..	14	13	12	11	8	9	7	6	5	4
150 and over 140 ..	15	14	13	12	9	10	8	7	6	5
160 and over 150 ..	16	15	14	13	9	10	8	7	6	5
170 and over 160 ..	17	16	15	14	10	11	9	8	7	6
180 and over 170 ..	18	17	16	15	10	11	9	8	7	6
190 and over 180 ..	19	18	17	16	11	12	10	9	8	7
200 and over 170 ..	20	19	18	17	11	12	10	9	8	7
250 and over 200 ..	25	23	21	20	14	15	13	12	11	10
300 and over 250 ..	30	25	23	21	15	16	13	12	11	10
Over 300	30	25	23	21	15	16	13	12	11	10

Upon the facts before us on this record we are of opinion and find that the present rates and carload minima for movements of the commodities hereinafter named between Shreveport and points in Texas are and for the future will be unjust and unreasonable in so far as they may exceed the rates and carload minima named below, which we find just and reasonable. In computing rates per 100 pounds if the resulting rate ends in a fraction of a cent, that fraction may be dropped if one-fourth or less; may be taken as one-half if more than one-fourth and less than three-fourths; and as 1 cent if three fourths or more.

(1) Beef cattle, stock cattle, horses, and mules; Carload minima for cattle 22,000 pounds, for horses and mules 23,000 pounds, when in cars 36 feet 7 inches to 40 feet in length, adding 2½ per cent for each foot or fraction of a foot in excess of 40 feet.

Rates for Single-line Application.

Miles.	Beef cattle rate.[1]	Horse and mule rate.	Miles.	Beef cattle rate.	Horse and mule rate.
	Cents.	Cents.		Cents.	Cents.
10 and less	6	10	200 and over 150....	19	23
20 and over 10..	7	11	250 and over 200....	21	25
30 and over 20..	8	12	300 and over 250....	23	27
40 and over 30..	9	13	350 and over 300....	25	29
50 and over 40..	10	14	400 and over 350....	27	31
60 and over 50..	11	15	500 and over 400....	31	34
70 and over 60..	12	16	600 and over 500....	35	37
80 and over 70..	13	17	700 and over 600....	39	40
90 and over 80..	14	18	800 and over 700....	43	43
100 and over 90..	15	19	Over 800	43	43
150 and over 100..	17	21			

Rates for joint line application may exceed those here named for single-line application by 2½ cents per 100 pounds, for distances of 500 miles or less.

(2) Stone (rough): Carload minimum 50,000 pounds, or
146 marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, 33 1/3 per cent of class E rates up to and including 350 miles but not to exceed 5 mills per ton per mile for distances greater than 350 miles; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(3) Sand and gravel: Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

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[1]Stock cattle to other than market points, rate 75 per cent of rates on beef cattle.

Rates, for single-line application, at least 10 cents per ton less than corresponding rates on rough stone up to and including 350 miles, but not to exceed 4½ mills per ton per mile for distances greater than 350 miles; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(4) Common brick: Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, 40 per cent of class E rates up to and including 300 miles, with addition of 5 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 17 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(5) Fire brick: Carload minimum, 40,000 pounds.

Rates, for single-line application, 40 per cent of class D rates up to and including 300 miles, with addition of 5 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 20 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 1 cent per 100 pounds.

(6) Junk: Carload minimum, 30,000 pounds.

Rates, for single-line application, 40 per cent of class B rates up to but not exceeding 400 miles, with addition of 4 mills per 100 pounds for each 25 miles in excess of 400 miles, until a
147 maximum rate of 20 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum of 20 cents per 100 pounds.

(7) Lignite: Carload minimum, 40,000 pounds.

Rates, for single-line application, 25 per cent of class D rates up to but not exceeding 300 miles, with addition of 4 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 15 cents per 100 pounds is reached; for joint-line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(8) Cordwood and tan bark: Carload minima.

Length of car, in feet.	Pounds.
30 and less	28,000
Over 30 and not over 32	31,500
Over 32 and not over 34	35,000
Over 34	42,000

Rates, for single-line application, 30 per cent of class E rates up to and including 300 miles; with addition of 4 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 15 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(9) Machinery (gin and irrignation): Carload minimum, 24,000 pounds.

Rates to or from points in inter-state common-point territory in Texas, for single-line application, class A rates, subject to a maximum of 45 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 4 cents per 100 pounds, subject to the same maximum.

Rates to or from points in inter-state differential territory in Texas may exceed said maximum by the class A differentials hereinabove prescribed.

148 (10) Glass fruit jars and bottles: Carload minimum, 30,000 pounds.

Rates to or from points in said common-point territory, for single-line application, 50 per cent of fifth-class rates; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds. Rates to or from points in said differential territory may exceed those here named for common-point territory by the fifth-class differentials hereinabove prescribed.

(11) Iron and steel articles: Carload minimum, 30,000 pounds.

Rates to or from points in said common-point territory, for single-line application, 60 per cent of fifth-class rates, subject to a maximum of 32 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum. Rates to or from points in said differential territory may exceed said maximum by the fifth-class differentials hereinabove prescribed.

(12) Potatoes and turnips: Carload minimum, 30,000 pounds.

Rates to or from points in said common-point territory, for single-line application, 85 per cent of class C rates, subject to a maximum of 25 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum. Rates to or from points in said differential territory may exceed said maximum by the class C differentials hereinabove prescribed.

(13) Fruits, melons, and vegetables: Carload minimum 24,000 pounds.

Rates to or from points in said common-point territory, for single-line application, class C rates up to and including 80 miles, or, where the haul exceeds 80 miles, 2 cents per 100 pounds higher than the rates above prescribed on potatoes and turnips, subject to a maximum of 27 cents per 100 pounds; for joint line ap-

149 plication, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum. Rates to or from points in said differential territory may exceed said maximum by the class C differential hereinabove prescribed.

(14) Empty barrels and kegs: Carload minima:

Length of car, in feet.	Tight barrels and kegs.	Slack barrels and kegs.
36 and less	11,200	10,000
40 and over 36	14,000	11,000
45 and over 40	16,100	12,000
50 and over 45	18,500	14,000

Rates for Single-line Application.

Distance in miles.	Rate in cents.	Distance in miles.	Rate in cents.
10 and less	5	130 and over 120	13½
20 and over 10	6	140 and over 130	13½
30 and over 20	7	150 and over 140	14
40 and over 30	8	200 and over 150	15
50 and over 40	9	250 and over 200	16
60 and over 50	10	300 and over 250	17
70 and over 60	11	350 and over 300	18
80 and over 70	11½	400 and over 350	19
90 and over 80	12	500 and over 400	21
100 and over 90	12½	600 and over 500	23
110 and over 100	12½	700 and over 600	25
120 and over 110	13	Over 70	25

Rates for joint application may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum of 25 cents.

(15) Blackstrap molasses: Carload minima, 36,000 pounds.

Rates to or from Points in Said Common-point Territory for Single-line Application.

Distance in miles.	Rate in cents.	Distance in miles.	Rate in cents.
10 and less	4	120 and over 110	12
20 and over 10	5	130 and over 120	12½
30 and over 20	6	140 and over 130	13
40 and over 30	7	150 and over 140	13
50 and over 40	8	160 and over 150	13½
60 and over 50	9	200 and over 160	14½
70 and over 60	10	250 and over 200	15½

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80 and over 70	10	300 and over 250	16½
90 and over 80	11	350 and over 300	17½
100 and over 90	11	400 and over 350	18½
110 and over 100	12	Over 400	19

Rates for joint line application may exceed those here named for single-line application by 1 cent per 100 pounds, subject to the same maximum of 19 cents per 100 pounds.

Rates to or from points in said differential territory may exceed said maximum by the fifth-class differentials hereinabove prescribed.

(16) Cottonseed and products: Carload minima:

Cottonseed, straight carloads, 30,000 pounds; cottonseed cake and meal, straight or mixed carloads, 36,000 pounds; cottonseed hulls and articles taking same rates, straight carloads, 30,000 pounds; cottonseed oil, tank bottoms, in wood, straight or mixed carloads, 30,000 pounds; in tank cars, straight carloads, subject to an estimated weight of 7½ pounds per gallon, 47,000 pounds, unless the shell capacity of the tank is less, in which case the shell capacity shall govern.

Rates to or from Points in said Common-point Territory for Single-line Application.

Distance in miles.	Cottonseed, cottonseed cake and meal.	Cottonseed hulls and bran, rice bran and rice hulls.	Cottonseed oil and tank bottoms.
10 and less	5.0	4.5	9.0
20 and over 10.....	6.0	4.5	9.0
30 and over 20.....	6.5	5.0	10.0
40 and over 30.....	7.0	5.0	11.0
50 and over 40.....	7.5	5.0	12.0
60 and over 50.....	8.0	5.5	13.0
70 and over 60.....	8.5	6.0	13.5
80 and over 70.....	9.0	6.5	14.0
90 and over 80.....	9.5	7.0	14.5
100 and over 90.....	10.0	7.5	15.0
120 and over 100.....	11.0	8.0	16.0
140 and over 120.....	12.0	8.5	17.0
160 and over 140.....	13.0	9.0	18.0
180 and over 160.....	14.0	9.5	19.0
200 and over 180.....	15.0	10.0	20.0
240 and over 200.....	16.5	11.0	22.0
280 and over 240.....	17.5	11.5	23.5
300 and over 280.....	18.0	12.0	24.0
320 and over 300.....	19.0	12.5	24.5
340 and over 320.....	20.0	13.0	25.0
360 and over 340.....	21.0	13.0	25.0
Over 360	21.0	13.0	25.0

151 Rates for joint line application may exceed those here named for single-line application by 1½ cents per 100 pounds, subject to the sam- maxima.

Rates to or from points in said differential territory may exceed said maxima by the following differentials:

Distance in miles.	Cotton-seed.	Cottonseed cake and meal.	Cottonseed hulls and bran and rice hulls.	Cottonseed oil and tank bottoms.
50 and less	1.0	1.0	1.0	1.0
75 and over 50..	1.5	2.0	1.5	2.0
100 and over 75..	2.0	3.0	2.0	3.0
150 and over 100..	3.0	4.0	3.0	4.0
Over 150	4.0	5.0	4.0	5.0

On mixed carloads of cottonseed hulls and cottonseed cake and meal the highest rate applicable on any commodity included in the shipment shall apply, subject to a minimum weight of 36,000 pounds.

(17) Unshelled peanuts, flour, wheat, corn, hay, and articles taking the same rates, respectively: Carload minima:

	Pounds.
On corn and articles taking corn rates, except as shown below	36,000
On ear corn, snapped or in the shuck; also on the following articles in the head: Feterita, Kaffir corn, milo maize, and Egyptian wheat; in straight or mixed carloads:	
When loaded to the full visible capacity of cars smaller than 36 feet in length and 8 feet high	24,000
When loaded in cars 36 feet in length and 8 feet high or larger	30,000
On oats, also oats and barley blended.....	30,000
On milo maize, Kaffir corn, and feterita.....	36,000
On wheat and articles taking wheat rates, except as shown below	36,000
On grain products	30,000
On peanuts	30,000
On seeds	30,000
On hay and articles taking hay rates:	
Cars 32 feet & less in length, internal measurement...	14,000
Cars 34 feet and over 32 feet in length.....	15,000
Cars 36 feet and over 34 feet in length.....	16,000
Cars over 36 feet in length	17,000

Rates to or from Points in said Common-point Territory, for Single-line Application.

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Distance in miles.	Unshelled peanuts.	Flour & articles taking same rate.	Wheat & articles taking same rate.	Corn & articles taking same rate.	Hay and articles taking same rate.
10 and less	6.0	6.0	5.0	4.0	5.0
20 and over 10..	8.0	8.0	6.0	5.0	6.0
30 and over 20..	10.0	10.0	7.0	6.0	7.0
40 and over 30..	11.0	11.0	8.0	6.5	8.0
50 and over 40..	12.0	12.0	9.0	7.0	9.0
60 and over 50..	12.5	12.5	9.5	7.5	9.5
70 and over 60..	13.0	13.0	10.0	8.0	10.0
80 and over 70..	13.5	13.5	10.5	8.5	10.5
90 and over 80..	14.0	14.0	11.0	9.0	11.0
100 and over 90..	14.5	14.5	11.5	9.5	11.5
110 and over 100..	15.0	15.0	12.0	10.0	12.0
120 and over 110..	15.5	15.5	12.5	10.5	12.5
130 and over 120..	16.0	16.0	13.0	11.0	13.0
140 and over 130..	16.5	16.5	13.5	11.5	13.5
150 and over 140..	17.0	17.0	14.0	12.0	14.0
200 and over 150..	19.5	19.5	16.5	14.5	16.5
250 and over 200..	22.0	22.0	19.0	17.0	19.0
Over 250 miles	22.0	22.0	19.0	17.0	19.0

Rates for joint line application may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maxima.

Rates to or from points in said differential territory may exceed said maxima by the following differentials:

For hauls in differential territory of—	Unshelled peanuts.	Flour and articles taking same rates.	Wheat & articles taking same rates.	Corn & articles taking same rates.	Hay & articles taking same rates.
25 miles and less	1.0	1.0	1.0	1.0	1.0
50 miles and over 25..	2.5	2.5	2.0	1.0	1.5
75 miles and over 50..	3.75	3.75	3.0	2.0	2.0
100 miles and over 75..	5.0	5.0	4.0	2.0	3.0
150 miles and over 100..	6.25	6.25	5.0	3.0	4.0
200 miles and over 150..	7.5	7.5	5.0	4.0	4.5
250 miles and over 200..	8.0	8.0	6.0	5.0	5.0
300 miles and over 250..	9.0	9.0	6.0	5.0	5.5
Over 300 miles	10.0	10.0	7.5	5.0	6.0

Other Commodities.

We shall consider next the list of commodities already mentioned which move in Texas on class rates for short distances and to which

certain maxima apply for all greater distances. We have carefully considered all of the evidence with reference to the rates now applied as maxima in Texas on these articles, the changes sought by the carriers, and the present rates from Shreveport. Upon all of the
153 facts before us, we are of opinion and find that the carload rates for single-line application between Shreveport and Texas inter-state common points on these articles are and for the future will be unjust and unreasonable to the extent that they exceed for like distances the reasonable rates hereinbefore prescribed as maxima for the classes to which the respective articles belong, subject to the following maxima in cents per 100 pounds:

	Cents.
Agricultural implements (except hand implements)	45
Bagging and ties	24
Binder twine	38
Cans, cases, and pails (tin)	48
Baskets	40
Chocolate raw material	38
Dry goods	55
Window glass	24
Glassware (table)	45
Horse and mule shoes	33
Oil (refined petroleum)	28
Iron and steel pipe	24
Wrapping paper	44
Printing paper	30
Tin articles	55
Wire and nails	28
Door locks	55
Tools, files and rasps	55

Rates for joint line application may exceed those here named for single-line application by the class differentials hereinbefore prescribed for the classes under which the articles are rated, subject to the same maxima.

Rates to or from points in said differential territory may exceed said maxima by the class differentials hereinbefore prescribed for the classes under which the articles are rated corresponding to hauls in said differential territory.

We also find that the reasonable carload minima to be applied on the commodities listed in the preceding paragraph, where not specified in Appendix A, are those provided in western classification No. 53.

The rates and carload minima prescribed for the transportation of the commodities named in this report will also apply, respectively, to the transportation of the commodities named in Appendix A.

154 *Undue Prejudice to Shreveport.*

There is no doubt concerning the disparity that exists between the class rates on most commodities from Shreveport to destinations in

Texas as compared with rates from Texas points to the same destinations for like distances. It is equally clear that the commodity rates from Texas points to Shreveport are materially higher than the rates to points in Texas for like distances. This rate relationship prevents the free and normal movement of traffic from and to Shreveport, and to that extent is unduly prejudicial to that locality.

Intervenors sought to introduce evidence with reference to the inbound rates to Shreveport from certain producing territory, and to contrast these rates with inbound rates to Texas points, for the purpose of showing that Shreveport had an advantage on the inbound rates and for that reason a discrimination against Shreveport and its shippers on outbound rates can not be unlawful. In our original report in No. 3918, supra, we had occasion to say, respecting this same contention:

It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates.

The proposition that Shreveport has a right to claim the same treatment with respect to rates to and from Texas as is accorded to towns in Texas 25, 50, or 100 miles west of Shreveport, distance and respective transportation conditions considered, regardless of the inbound rates, is so self-evident as to require no discussion. We are dealing here with outbound rates, and the reasonableness of such rates does not in any wise depend upon whether the articles taking those rates were produced at the points of shipment or came to those points by wagon, boat, railroad, or otherwise.

155 The uncontradicted evidence is that no transportation conditions exist which justify rates between Shreveport and points in Texas higher than those contemporaneously applied for like distances within Texas.

In both the original and supplemental reports the carriers, upon the record then made, were required to establish class rates from Shreveport to points in Texas not higher than those prescribed in a certain mileage scale of those contemporaneously maintained for like distances from Texas points "toward Shreveport." At the last hearing the limitation expressed by the words "toward Shreveport" used in the reports and orders was the subject of some discussion and criticism. The fact that the rate from Shreveport to a point in Texas was greater, mileage considered, than the rates from Dallas, Fort Worth, Houston, or other Texas cities to the same destination, the transportation conditions being practically the same in all distances, was shown to constitute undue prejudice to Shreveport, regardless of the direction in which the destination point might lie from these Texas cities.

For example, Waxahachie is on the Missouri, Kansas & Texas Railway, 218 miles north of Houston and 255 miles west of Shreve-

port. To continue materially higher rates from Shreveport to Waxahachie than from Houston on any article which Shreveport shippers may desire to ship to that point is as unduly prejudicial to Shreveport as if Waxahachie lay upon the direct line between Shreveport and Houston and almost midway between the two cities. Sweetwater is on the Texas & Pacific Railroad 424 miles west of Shreveport, and on the Gulf, Colorado & Santa Fe 460 miles northwest of Houston. The circumstances of transportation being the same, the maintenance of lower rates from Houston to Sweetwater than are contemporaneously maintained from Shreveport on all articles that Shreveport may desire to ship to Sweetwater is as prejudicial and disadvantageous to Shreveport as would be the case if Sweetwater was situated in the direction of Shreveport from Houston.

156 Furthermore, no adjustment of rates from Houston, Dallas, Fort Worth, or other cities in Texas in which the measure of rates from those cities toward Shreveport is greater than the measure of rates made in other directions, or in which the classification of the article is made to depend upon the direction in which the traffic moves, can possibly result in anything but confusion and manifold discriminations. Traffic can move from Houston by many routes running north, northeast, and east, all constituting parts of workable rout-s to Shreveport, but none on a line drawn in the direction of Shreveport.

The purpose of our order in these cases is not only to establish just and reasonable maximum rates for inter-state traffic, but also to correct unlawful discrimination against that traffic, and it is urged that such orders should be made in the consolidated cases as will more perfectly effectuate that purpose.

Both complaina-ts and intervenors call attention to the fact that one of the possible effects of our supplemental order might be to produce discrimination against certain localities in Texas. For example, Galveston and Houston lie east of the line we have heretofore described which formed the western boundary of the area in Texas to which the requirements of the supplemental order applied. Port Aransas lies west of the line. The tariffs filed by the carriers in response to the supplemental order carried increases in the rates from Galveston and Houston to northeast Texas points, but did not increase the rates from Port Aransas to the same destinations. Paris, Texas, may be considered a representative point in northeast Texas, 373.7 miles from Galveston and 508.3 miles from Port Aransas. The class rates which the carriers published in response to our supplemental order from Galveston to Paris, are as follows:

Class:	1	2	3	4	5	A	B	C	D	E
Cents.....	106	92	76	66	52	53	49	40	32	28

while the rates from Port Aransas are as follows:

Class:	1	2	3	4	5	A	B	C	D	E
Cents.....	87	78	65	61	47	49	43	36	25	19

No transportation conditions have been shown that would justify the application of rates from Galveston higher than from Port
157 Aransas to these northeast Texas points. It is evident, also, that the scale of class rates required by the Texas commission from many points west of the line we have described to points in east Texas is materially lower than the rates authorized by the supplemental order for application from directly intermediate points to the same destinations. Had the published rates become effective, doubtless unjust discriminations against certain intra-state traffic in Texas would have been produced. Although, as stated, our order is intended to correct unlawful discrimination against inter-state traffic, we would not designedly bring about a relation between intra-state rates that is unduly prejudicial to one section of the State as compared with another. We are urged by the complainants to give to our order in this case such broader scope as will prevent the discriminations to which attention has been directed.

It may be regarded as established beyond any possibility of doubt that the present relationship of rates and the difference in classifications has been and is now unduly prejudicial to Shreveport and operates to unduly restrict the trade and commerce of that city. The only excuse for this apparent and admitted discrimination against Shreveport is the claim of the carriers that the intra-state rates in Texas are under the control of the Texas Railroad Commission and that the carriers are powerless to increase them except by permission of that body.

The power and authority of this Commission to make such order in a case of this kind as may be necessary to remove any unlawful discrimination now existing against inter-state traffic has been fully sustained by the Supreme Court of the United States in Houston & Texas Ry. v. United States, supra. In that case the court said:

Whe-ver the inter-state and intra-state transactions of carriers are so related that the government of the one involves the control of the other it is Congress and not the State that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State and not the nation would be supreme within the national field.

If the sole issue were whether or not the present adjustment of class and commodity rates between Shreveport and points in
158 Texas is unduly prejudicial to Shreveport, it would be competent for us, if we found that complainants had sustained their allegation, to make an order requiring defendants to remove such undue prejudice. In the absence of other requirements by federal or state authorities, such an order could be complied with by increasing the Texas rates to the level of the inter-state rates, or by reducing the inter-state rates to the intra-state basis.

Should the latter alternative be adopted, either voluntarily or under compulsion of the state authorities, the intra-state rates and regulations would be given extraterritorial force and would become the standard for interstate commerce. The effect of adopting such a plan would not stop with Shreveport. Alexandria and Monroe, La., Vicksburg, Miss., and other points are in competition with

Shreveport for trade and commerce to and from Texas and, so far as we are advised, there is no more reason for extending the Texas rates and classification to Shreveport than to other points in Louisiana or other states east of the Mississippi river.

It can easily be conceived that if carriers, in removing undue prejudice against interstate commerce, were bound to follow the standard set by the state authorities, inter-state rates, based in part on the requirements of one state and in part on those of others, would soon be in inextricable and intolerable confusion. This the commerce clause of the constitution, under which the Congress has created this Commission and vested it with power, was designed to prevent.

In this proceeding the allegation os undue prejudice is not the sole issue. Defendants' class rates and many of their commodity rates are attacked as unjust and unreasonable.

It is perhaps unnecessary to say that the findings and conclusions of state commissions respecting the reasonableness of intra-state rates should be given great weight, that rates established in accordance with such findings should not lightly be disturbed and that we consider it our duty to co-operate in every proper way with the State authorities.

159 But the obligation placed upon us by the law requires us to exercise our best judgment upon the facts placed before us and, in a case such as this, to prescribe just and reasonable maximum rates and enter such order as shall prevent or remove undue prejudice to interstate commerce, even though in some instances such action may incidentally affect the level of intra-state rates.

Upon the record we are of opinion and find that defendants' present class rates between Shreveport and points in Texas are and for the future will be unduly prejudicial to Shreveport in so far as such rates exceed those contemporaneously applied for like distances between points in Texas, except in instances where the latter have been reduced below the regular mileage scale applied in that state on account of water competition along the Gulf of Mexico or waters contiguous thereto.

We are further of opinion and find that defendants' present carload commodity rates on beef cattle; stock cattle; horses and mules; stone (rough); sand and gravel; common brick; fire brick; junk; lignite; cordwood and tan bark; machinery (gin and irrigation); glass fruit jars and bottles; iron and steel articles; potatoes and turnips; fruits, melons, and vegetables; empty barrels and kegs; blackstrap molasses; cotton seed and products; unshelled peanuts; flour; wheat; corn; hay; agricultural implements, except hand implements; bagging and ties; binder twine; cans, cases and pails (tin); baskets; chocolate raw materials; dry goods; window glass; glassware (table); horse and mule shoes; oil (refined petroleum); iron and steel pipe; wrapping paper; printing paper; tin articles; wire and nails; door locks; tools, files, and rasps; between Shreveport and points in Texas are and for the future will be unduly prejudicial to Shreveport in so far as such rates exceed those contemporaneously applied for the transportation of the same commodities for like dis-

tances between points in Texas, except in instances where the lat
on account of water competition alonf the Gulf of Mexico or wa
contiguous thereto, have been depressed below the regular rail r
applied for the transportation of the respective commodi
160 within the State of Texas.

There appear to be no transportation conditions requir
the application of different classifications on inter-state and in
state traffic to destinations in Texas. The present situation is und
prejudicial to inter-state shippers and traffic and unduly preferen
to intra-state shippers and traffic.

In our supplemental report in No. 3918, supra, at p. 478, we sai
Unquestionably the situation between Shreveport and its Te
competitors is such that unless the same classification applies un
discrimination results. The western classification governs inter-s
transportation in the territory surrounding Shreveport, includ
transportation between Texas points and points in other states.
large part it has received the indorsement of this Commission. W
ern Classification Case, 25 I. C. C., 442. Considering the find
already made, that transportation conditions for the competi
hauls here involved are substantially similar, justice demands t
the same classification shall apply to all, and consequently that
western classification shall govern on traffic via the lines of th
defendants from points in eastern Texas toward Shreveport.

It has been conclusively shown, and we therefore find, that
present difference in classification has been, now is, and for the fut
would be unduly prejudicial to Shreveport. We are therefore c
strained to find that for the future defendants must establish
apply to the transportation of property between points in Texas
provisions of the western classification in effect at the time such tra
portation takes place.

Fourth Section Departures.

In many instances circuitous lines in Texas meet the rates m
upon a mileage scale by the direct lines at competitive points,
carry higher rates at intermeditaate points. In establishing r
from Shreveport to Texas points that will harmonize with the r
from *from* near-by points in Texas to the same destinations, it may
that relief from the provisions of the fourth section of the act
regulate commerce will be necessary.

Carriers operating circuitous routes between Shreveport and Te
points and desiring to meet at competitive points the rates made
the direct lines while maintaining higher rates to intermediate poi
will be expected to make application to the Commission for autho
to do so.

161 Many of the rates between Shreveport and Texas po
exceed the sums of the intermediate rates via Waskom or s
other Texas point. If both intermediates are subject to the ac
regulate commerce, through rates which are higher than the ag
gate of the intermediate rates are in violation of the fourth secti
In those instances in which rates between two Texas points are f

with this Commission for use in making up inter-state rates they become component parts of through inter-state rates and are therefore subject to the act.

The disposition above outlined and the orders in Through Rates to Points in Louisiana and Texas, 38 I. C. C., 153, will correct the violations to which our attention has been directed.

If the rates between Shreveport and Texas points are reduced to the level of the Shreveport scale or any scale approximating it, the rates now in effect between Foster, La., and other Louisiana points, on the one hand, and points in Texas on the other, will be greatly out of proportion to the rates between Shreveport and the same Texas points, and in some instances will be higher than the aggregate of the intermediate rates to and from Shreveport. We make no order at this time respecting the rates between these Louisiana points and Texas, but the carriers will be expected to readjust these rates to harmonize with those herein found reasonable between Shreveport and Texas points. If this is not done the matter may be brought to our attention by appropriate proceedings.

Points on or Near the Gulf of Mexico.

The intra-state rates between and from and to certain points on or near the Gulf of Mexico, among which are Galveston, Port Bolivar, and Port Arthur, have been influenced to a certain extent by water competition. This has brought about a relation between such rates and those from and to inland points which differs from the usual and customary relation existing between the rates from and to other points in Texas situated at similar distances one from another. For example, the present class rates between Houston and points in Texas intra-state common-point territory more than 245 miles from
162 Houston are, in cents per 100 pounds:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	80	72	60	58	44	46	40	34	23	17

The rates between Galveston and points in Texas more than 245 miles from Houston are as follows:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	87	78	65	61	47	49	43	36	25	19

In other words, the rates between Galveston and points in common-point territory are the following differentials over the rates from and to Houston:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	7	6	5	3	3	3	3	2	2	2

This distance from Galveston to Houston by the Galveston, Harrisburg & San Antonio Railway is 57 miles.

The plan of building the rates from Galveston and points in common-point territory by the use of differentials over the Houston

rates accords Galveston lower class rates for distances of approximately 200 miles and less, and higher class rates for greater distances, than would be the case if such rates were constructed on the general basis obtaining in common-point territory.

Commodity rates between Galveston and points in Texas are also constructed by adding fixed differentials to the Houston rates. Examples of these differentials are: 3 cents per 100 pounds on horse and mule shoes; 2 cents per 100 pounds on pipe couplings; 3 cents per 100 pounds on wrapping paper; 3 cents per 100 pounds on binder twine; and 5 cents per 100 pounds on baskets.

Commercial organizations of Galveston have complained of these differentials, alleging that the resulting rates produce an unjust and unlawful discrimination against Galveston traffic, and suit was brought against the Texas commission, complaining of these rates. The Galveston interests were successful in the lower court, but the decision of that court was reversed by the supreme court of Texas.

Where rates so constructed from Galveston to points within 200 miles of that city are lower than those contemporaneously applicable for like distances from Shreveport, the application of the
163 lower rates is not unduly prejudicial to Shreveport if due to the relative positions of Galveston and Houston, the existing water transportation between those points, the competition of Houston, or other compelling influences.

The application of higher rates from Galveston than from Shreveport for distances exceeding 200 miles certainly cannot prejudice Shreveport.

For disposition of the issues here before us we do not find it necessary to establish the relation which should exist between the rates from Galveston and other Gulf ports, on the one hand, and Houston and other inland points, on the other.

Nothing in this report is to be construed as requiring the carriers to disturb the existing rates between these water competitive points along the Gulf of Mexico or the existing relationship between the rates from and to such Gulf points and the rates from and to Houston, Beaumont, Sabine Pass, and other similar points.

The supplemental order in Docket No. 3918 will be vacated and set aside. As the tariffs under suspension in Investigation and Suspension Docket No. 710 have been canceled our orders of suspension therein will be vacated. The respondents in Investigation and Suspension Docket No. 729 will be required to cancel the schedules under suspension in that proceeding. An order will be entered in conformity with our conclusions.

Attached to the foregoing report were a large number of exhibits contained in Appendices A, B, C and D, the same being omitted here for the reason that they are not believed to be material to the issues in the cause; however, it is agreed that either party may refer to and quote any portion thereof in their briefs or arguments before the supreme court; said exhibits and appendices being published in 41 I. C. C., pages 127 to 177, inclusive, the same being here referred to and made a part hereof.

164 (3.) *Order of the Interstate Commerce Commission of Date July 7th,* 1916.

A copy of the order of the Interstate Commerce Commission, of date July 7th, 1916, entered in I. C. C. No. 8418, Louisiana Railroad Commission vs. Aransas Harbor Terminal Railway Company, directed against each and all of the Plaintiffs and intervening railroads, and involved in this cause, *was* attached as an Exhibit to said original Bill of Complaint, filed by Plaintiffs September 4th, 1916, was introduced and read in evidence by Plaintiffs, which order reads as follows, to wit:

"It appearing,—That by order dated September 11th, 1915, the Commission entered upon a hearing concerning the propriety of the increases and lawfulness of the regulations and practices stated in the schedules enumerated and described in said order, and subsequently ordered that the operation of said schedules be suspended until July 13th, 1916, the proceeding being known as Investigation And Suspension Docket No. 710;

165 It further appearing, that by order dated October 14th, 1915, the Commission entered upon a hearing concerning the propriety and the lawfulness of the regulations and practices satated in the schedules enumerated and described in said order, and subsequently ordered that the operation of said schedules be suspended until August 12th, 1916, the proceeding being known as Investigation and Suspension Docket No. 729;

It further appearing, That by agreement of all interested parties said Investigation and Suspension Docket Nos. 710 and 729 have been consolidated for hearing and disposition with Docket Nos. 3918, 8290, and 8418;

And it further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon which said report is hereby referred to and made a part hereof:

I. It is ordered, That the orders heretofore entered in said Investigation and Suspension Docket No. 710 suspending the operation of the schedules therein enumerated and described be, and they are hereby, vacated and set aside as of November 1, 1916.

II. It is furthe*red* ordered, That the carriers respondents in said Investigation and Suspension Docket No. 729 be, and they are hereby, notified and required to cancel, on or before November 1st, 1916, the regulations and practices stated in the schedules specified in the orders of suspension therein.

III. It is further ordered, That the supplemental order entered June 17th, 1915, in No. 3918 be, and it is hereby, vacated and set aside as of November 1st, 1916.

166 IV. It is further ordered, That the above-named defendants be, and they are hereby, notified and required to cease and desist, on or before November 1, 1916, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of property between Shreveport, La., and points in Texas, their pres-

ent class rates and carload rates on the following commodities: Beef cattle; stock cattle; horses and mules; stone (rough); sand and gravel; common brick; fire brick; junk; lignite; cordwood and tan bark; machinery (gin and irrigation); glass fruit jars and bottles; iron and steel articles; potatoes and turnips; fruits, melons, and vegetables; empty barrels and kegs; blackstrap molasses; cotton seed and products; unshelled peanuts; flour; wheat; corn; hay; agricultural implements, except hand implements; bagging and ties; binder twine; cans, cases, and pails (tin); baskets; chocolate raw materials; dry goods; window glass; glassware (table); horse and mule shoes; oil refined petroleum; iron and steel pipe; wrapping paper; printing paper; tin articles; wire and nails; door locks; tools, files, and rasps; and on other commodities taking the same rates, as shown in Appendix A, hereby referred to and made a part hereof, which said rates have been found to be unjust and unreasonable.

V. It is further ordered, That said defendants be, and they are hereby, notified and required to establish, on or before November 1, 1916, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of property between Shreveport and points in Texas interstate common-point territory class rates which for single-line application shall not exceed the following, in cents per 100 pounds, found in said report to be reasonable:

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Miles.	1	2	3	4	5	A	B	C	D	E
10 and less.....	23	19	16	14	10	10	8	7	6	5
20 and over 10...	27	22	19	16	12	13	10	9	8	6
30 and over 20...	30	25	21	18	14	16	12	10	9	7
40 and over 30...	33	28	23	20	16	17	13	11	10	8
50 and over 40...	37	31	26	22	18	19	15	13	11	9
60 and over 50...	40	34	28	24	20	21	16	14	12	10
70 and over 60...	43	37	30	26	21	22	17	15	13	11
80 and over 70...	47	40	33	28	23	24	19	16	14	12
90 and over 80...	50	43	35	30	25	26	20	18	15	12
100 and over 90...	53	45	37	32	27	28	21	19	16	13
110 and over 100..	57	48	40	34	29	30	23	20	17	14
120 and over 110..	60	51	42	36	30	31	24	21	18	15
130 and over 120..	63	54	44	38	31	33	25	22	19	16
140 and over 130..	67	57	47	40	33	35	27	23	20	17
150 and over 140..	70	60	49	42	35	36	28	25	21	18
175 and over 150..	75	64	53	45	38	39	30	26	22	19
200 and over 175..	80	68	56	48	40	42	32	28	24	20
225 and over 200..	85	72	59	51	43	44	34	30	26	21
250 and over 225..	90	77	63	54	45	47	36	32	27	22
300 and over 250..	100	85	70	60	50	52	40	35	30	25
350 and over 300..	103	87	72	62	52	54	41	36	31	26
400 and over 350..	106	90	74	64	53	55	42	37	32	26
Over 400	106	90	74	64	53	55	42	37	32	26

Class rates for joint line application as heretofore defined may be made by adding to the rates prescribed in the above table the following amounts:

Classes:	1	2	3	4	5	A	B	C	D	E
Cents	8	7	6	5	4	4	4	3	2	2

Rates for distances of 400 miles or less must not exceed the following, in cents per 100 pounds:

Classes:	1	2	3	4	5	A	B	C	D	E
Cents	106	90	74	64	53	55	42	37	32	26

Class rates between Shreveport and points in differential territory in Texas may exceed the maximum rates above named by the following differentials in cents per 100 pounds, corresponding to the hauls in differential territory:

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Distance in miles.	1	2	3	4	5	A	B	C	D	E
20 and less.....	2	2	1	1	1	1	1	1	1	1
30 and over 20...	3	2	1	1	1	1	1	1	1	1
40 and over 30...	4	3	2	1	1	1	1	1	1	1
50 and over 40...	5	4	3	2	1	2	1	1	1	1
60 and over 50...	6	5	4	3	2	3	2	2	2	2
70 and over 60...	7	6	5	4	3	4	2	2	2	2
80 and over 70...	8	7	6	5	4	5	3	2	2	2
90 and over 80...	9	8	7	6	5	6	4	3	3	3
100 and over 90...	10	9	8	7	6	7	5	4	3	3
110 and over 100..	11	10	9	8	7	8	6	5	4	3
120 and over 110..	12	11	10	9	7	8	6	5	4	3
130 and over 120..	13	12	11	10	8	9	7	6	5	4
140 and over 130..	14	13	12	11	8	9	7	6	5	4
150 and over 140..	15	14	13	12	9	10	8	7	6	5
160 and over 150..	16	15	14	13	9	10	8	7	6	5
170 and over 160..	17	16	15	14	10	11	9	8	7	6
180 and over 170..	18	17	16	15	10	11	9	8	7	6
190 and over 180..	19	18	17	16	11	12	10	9	8	7
200 and over 190..	20	19	18	17	11	12	10	9	8	7
250 and over 200..	25	23	21	20	14	15	13	12	11	10
300 and over 250..	30	25	23	21	15	16	13	12	11	10
Over 300	30	25	23	21	15	16	13	12	11	10

VI. It is further ordered, That said defendants be, and they are hereby, notified and required to establish, on or before November 1, 1916, upon like notice, and thereafter to maintain and apply to the transportation in carloads of the following commodities and other commodities taking the same rates, as shown in said Appendix A, between said Shreveport and destinations in Texas, rates which shall not exceed those named below, in cents per 100 pounds, found in

said report to be reasonable. In computing rates per 100 pounds, if the resulting rate ends in a fraction of a cent, that fraction may be dropped if one-fourth or less; may be taken as one-half if more than one-fourth and less than three-fourths; and as 1 cent if three-fourths or more.

(1) Beef cattle, stock cattle, horses, and mules: Carload minima for cattle 22,000 pounds, for horses and mules 23,000 pounds, when in cars 36 feet 7 inches to 40 feet in length, adding 2½ per cent for each foot or fraction of a foot in excess of 40 feet.

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Miles.	Beef cattle.	Horses & mules.	Miles.	Beef cattle.	Horses, mules.
10 and less.....	6	10	200 & over 150.	19	23
20 and over 10..	7	11	250 & over 200.	21	25
30 and over 20..	8	12	300 & over 250.	23	27
40 and over 30..	9	13	350 & over 300.	25	29
50 and over 40..	10	14	400 & over 350.	27	31
60 and over 50..	11	15	500 & over 400.	31	34
70 and over 60..	12	16	600 & over 500.	35	37
80 and over 70..	13	17	700 & over 600.	39	40
90 and over 80..	14	18	800 & over 700.	43	43
100 and over 90..	15	19	Over 800.....	43	43
150 and over 100.	17	21			

Rates for joint line application may exceed those here named for single-line application by 2½ cents per 100 pounds for distances of 500 miles or less.

(2) Stone (rough): Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, 33 1/3 per cent of class E rates up to and including 350 miles but not exceed 5 mills per ton per mile for distances greater than 350 miles; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(3) Sand and gravel: Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, at least 10 cents per ton less than corresponding rates on rough stone up to and including 350 miles, but not to exceed 4½ mills per ton per mile for distances greater than 350 miles; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(4) Common brick: Carload minimum, 50,000 pounds, or marked capacity of the car if that be less than 50,000 pounds.

Rates, for single-line application, 40 per cent of class E up to and including 300 miles, with addition of 5 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 17 cents per 100 pounds is reached; for joint line application, may ex-

ceed those here named for single-line application by 7½ mills per 100 pounds.

(5) Fire brick: Carload minimum, 40,000 pounds.

Rates, for single-line application, 40 per cent of class D rates up to and including 300 miles, with addition of 5 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 20 cents per 100 lbs. is reached; for joint line application, may
170 exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum of 20 cents per 100 pounds.

(7) Lignite: Carload minimum, 40,000 pounds.

Rates, for single-line application, 25 per cent of class D rates up to but not exceeding 300 miles, with addition of 4 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 15 cents per 100 pounds *if* reached; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(8) Cordwood and tan bark: Carload minima:

Length of car, in feet.	Pounds.
30 and less	28,000
Over 30 and not over 32	31,500
Over 32 and not over 34	35,000
Over 34	42,000

Rates, for single-line application, 30 per cent of class E rates up to and including 300 miles, with addition of 4 mills per 100 pounds for each 25 miles in excess of 300 miles, until a maximum rate of 15 cents per 100 pounds is reached; for joint line application, may exceed those here named for single-line application by 7½ mills per 100 pounds.

(9) Machinery (gin and irrigation): Carload minimum, 24,000 pounds.

Rates to or from points in interstate common-point territory in Texas, for single-line application, class A rates, subject to a maximum of 45 cents per 100 pounds, subject to the same maximum. Rates to or from points in interstate differential territory in Texas may exceed said maximum by the class A differentials hereinabove prescribed.

(10) Glass fruit jars and bottles: Carload minimum, 30,000 pounds.

Rates to or from points in said common-point territory, for single-line application, 50 per cent of fifth-class rates; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds.

171 Rates to or from points in said differential territory may exceed those here named for common-point territory by the fifth-class differentials hereinabove prescribed.

(11) Iron and steel articles: Carload minimum, 30,000 pounds.

Rates to or from points in said common-point territory, for single

line application, 60 per cent of fifth-class rates, subject to a maximum of 32 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum. Rates to or from points in said differential territory may exceed said maximum by the fifth-class differentials hereinabove prescribed.

(12) Potatoes and turnips: Carload minimum, 30,000 pounds.

Rates to or from points in said common-point territory, for single line application, 85 per cent of class C rates, subject to a maximum of 25 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum. Rates to or from points in said differential territory may exceed said maximum by the class C differentials hereinabove prescribed.

(13) Fruits, melons, and vegetables: Carload minimum, 24,000 pounds.

Rates to or from points in said common-point territory, for single-line application, class C rates up to and including 80 miles, or, where the haul exceeds 80 miles, 2 cents per 100 pounds higher than the rates above prescribed on potatoes and turnips, subject to a maximum of 27 cents per 100 pounds; for joint line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum. Rates to or from points in said differential territory may exceed said maximum by the class C differentials hereinabove prescribed.

(14) Empty barrels and kegs: Carload minima:

Length of car, in feet.	Tight barrels and kegs.	Slack barrels and kegs.
36 and less	11,200	10,000
40 and over 36	14,000	11,000
45 and over 40	16,100	12,000
50 and over 45	18,500	14,000

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Distance in miles.	Rate in cents.	Distance in miles.	Rate in cents.
10 and less	5	130 and over 120	13½
20 and over 10	6	140 and over 130	13½
30 and over 20	7	150 and over 140	14
40 and over 30	8	200 and over 150	15
50 and over 40	9	250 and over 200	16
60 and over 50	10	300 and over 250	17
70 and over 60	11	350 and over 300	18
80 and over 70	11½	400 and over 350	19
90 and over 80	12	500 and over 400	21
100 and over 90	12½	600 and over 500	23
110 and over 100	12½	700 and over 600	25
120 and over 110	13	Over 700	25

Rates for joint application may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum of 25 cents.

(15) Blackstrap molasses: Carload minima, 36,000 pounds.

Rates to or from Points in said Common-point Territory for Single-line Application.

Distance in miles.	Rate in cents.	Distance in miles.	Rate in cents.
10 and less	4	120 and over 110...	12
20 and over 10...	5	130 and over 120...	12½
30 and over 20...	6	140 and over 130...	13
40 and over 30...	7	150 and over 140...	13
50 and over 40...	8	160 and over 150...	13½
60 and over 50...	9	200 and over 160...	14½
70 and over 60...	10	250 and over 200...	15½
80 and over 70...	10	300 and over 250...	16½
90 and over 80...	11	350 and over 300...	17½
100 and over 90...	11	400 and over 350...	18½
110 and over 100...	12	Over 400	19

Rates for joint line application may exceed those here named for single-line application by 1 cent per 100 pounds, subject to the same maximum of 19 cents per 100 pounds.

Rates to or from points in said differential territory may exceed said maximum by the fifth-class differentials hereinabove prescribed.

(16) Cottonseed and products: Carload minima,

Cottonseed, straight carloads, 30,000 pounds; cottonseed cake and meal, straight or mixed carloads, 36,000 pounds; cottonseed hulls and articles taking same rates, straight carloads, 30,000 pounds; cottonseed oil, tank bottoms, in wood, straight or mixed carloads, 30,000 pounds; in tank cars, straight carloads, subject to an estimated weight of 7½ pounds per gallon, 47,000 pounds, unless the shell capacity of the tank is less, in which case the shell capacity shall govern.

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Rates to or from Points in said Common-point Territory for Single-line Application.

Distance in miles.	Cottonseed, cottonseed cake and meal.	Cottonseed hulls & bran, rice bran & rice hulls.	Cottonseed oil & tank bottoms.
10 and less	5	4½	9
20 and over 10.....	6	4½	9
30 and over 20.....	6½	5	10
40 and over 30.....	7	5	11
50 and over 40.....	7½	5	12
60 and over 50.....	8	5½	13
70 and over 60.....	8½	6	13½
80 and over 70.....	9	6½	14
90 and over 80.....	9½	7	14½
100 and over 90.....	10	7½	15
120 and over 100.....	11	8	16
140 and over 120.....	12	8½	17
160 and over 140.....	13	9	18
180 and over 160.....	14	9½	19
200 and over 180.....	15	10	20
240 and over 200.....	16½	11	22
280 and over 240.....	17½	11½	23½
300 and over 280.....	18	12	24
320 and over 300.....	19	12½	24½
340 and over 320.....	20	13	25
360 and over 340.....	21	13	25
Over 360	21	13	25

Rates for joint line application may exceed those here named for single-line application by 1½ cents per 100 pounds, subject to the same maxima.

Rates to or from points in said differential territory may exceed said maxima by the following differentials:

Distance in miles.	Cottonseed.	Cottonseed cake and meal.	Cottonseed hulls and bran, rice bran and rice hulls.	Cottonseed oil and tank bottoms.
50 and less	1	1	1	1
75 and over 50.....	1½	2	1½	2
100 and over 75.....	2	3	3	3
150 and over 100.....	3	4	3	4
Over 150	4	5	4	5

174 On mixed carloads of cottonseed hulls and cottonseed cake and meal the highest rate applicable on any commodity included in the shipment shall apply, subject to a minimum weight of 35,000 pounds.

(17) Unshelled peanuts, flour, wheat, corn, hay and articles taking the same rates, respectively: Carload minima,

	Pounds.
On corn and articles taking corn rates, except as shown below	36,000
On ear corn, snapped or in the shuck, also on the following articles in the head:	
Feterita, Kaffir corn, milo maize, and Egyptian wheat; in straight or mixed carloads:	
When loaded to the full visible capacity of cars smaller than 36 feet in length and 8 feet high	24,000
When loaded in cars 36 feet in length and 8 feet high or larger	30,000
On oats, also oats and barley blended	30,000
On milo maize, Kaffir corn, and feterita	36,000
On wheat and articles taking wheat rates, except as shown below	36,000
On grain products	30,000
On peanuts	30,000
On seeds	30,000

On hay and articles taking hay rates:

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Cars 32 feet and less in length, internal measurement	14,000
Cars 34 feet and over 32 feet in length	15,000
Cars 36 feet and over 34 feet in length	16,000
Cars over 36 feet in length	17,000

Rates to or from in said Common-point Territory for Single-line Application.

Distance in miles.	Unshelled peanuts.	Flour & articles taking same rates.	Wheat & articles taking same rates.	Corn & articles taking same rates.	Hay & articles taking same rates.
10 and less	6	6	5	4	5
20 and over 10	8	8	6	5	6
30 and over 20	10	10	7	6	7
40 and over 30	11	11	8	6½	8
50 and over 40	12	12	9	7	9
60 and over 50	12½	12½	9½	7½	9½
70 and over 60	13	13	10	8	10
80 and over 70	13½	13½	10½	8½	10½
90 and over 80	14	14	11	9	11
100 and over 90	14½	14½	11½	9½	11½
110 and over 100	15	15	12	10	12
120 and over 110	15½	15½	12½	10½	12½
130 and over 120	16	16	13	11	13
140 and over 130	16½	16½	13½	11½	13½
150 and over 140	17	17	14	12	14
200 and over 150	19½	19½	16½	14½	16½
250 and over 200	22	22	19	17	19
Over 250	22	22	19	17	19

Rates for joint line application may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maxima

Rates to or from points in said differential territory may exceed said maxima by the following differentials:

For hauls in differential territory of—	Unshelled peanuts	Flour & articles taking same rates.	Wheat & articles taking same rates.	Corn & articles taking same rates.	Hay & articles taking same rates.
25 miles or less.....	1	1	1	1	1
50 miles & over 25 Mi..	2½	2½	2	1	1½
75 miles & over 50....	3¾	3¾	3	2	2
100 " & over 75....	5	5	4	2	3
150 " & over 100....	6¼	6¼	5	3	4
200 " & over 150....	7½	7½	5	4	4½
250 " & over 200....	8	8	6	5	5
300 " & over 250....	9	9	6	5	5½
Over 300 miles	10	10	7½	5	6

176 VII. It is further ordered, that said defendants be, and they are hereby, notified and required to establish, on or before November 1, 1916, upon like notice, and thereafter to maintain and apply to the transportation in carloads of the following commodities and other commodities taking the same rates, as shown in said Appendix A, from said Shreveport to destinations in Texas rates which shall not exceed the class rates hereinbefore prescribed as reasonable maxima for the classes to which the respective commodities belong, for like distances, and which shall not exceed the following, in cents per 100 pounds, as maxima:

	Cents
Agricultural implements (except hand implements)	45
Bagging and ties	24
Binder twine	28
Cans, cases, and pails (tins)	40
Baskets	40
Chocolate, raw materials	35
Dry goods	35
Window glass	24
Glassware (table)	45
Horse and mules shoes	35
Oil (refined petroleum)	35
Iron and steel pipe	24
Wrapping paper	44
Printing paper	30
Tin articles	35
Wire and nails	30
Door locks	35
Tools, files, and rasps	35

For hauls over joint lines rates on the above-named commodities may exceed those above named by the class differentials heretofore named for hauls over joint lines for the classes to which the respective commodities belong, subject to the maximum rates above named to and from points in common-point territory.

177 For hauls to and from points in differential territory, the maximum rates above named may be increased by the regular class differentials hereinbefore provided for the classes to which these commodities belong for hauls to and from that territory.

The carload minima on the commodities named in section VII of this order, where not specified in said Appendix A, must not exceed the carload minima for the same commodities in western classification No. 53.

VIII. It is further ordered, that the rates and carload minima prescribed for the transportation of the commodities named in this order shall also apply, respectively, to the transportation of the commodities named in said appendix A.

IX. It is further ordered, that said defendants be, and they are hereby, notified and required to cease and desist, on or before November 1, 1916, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of property between Shreveport and points in Texas any higher class rates or rates on the following named commodities in carloads: Beef cattle; stock cattle; horses and mules; stone (rough); sand and gravel; common brick; fire brick; junk; lignite; cordwood and tan bark; machinery (gin and irrigation); glass fruit jars and bottles; iron and steel articles; potatoes and turnips; fruits, melons, and vegetables; empty barrels and kegs; blackstrap molasses; cotton seed and products; unshelled peanuts; flour; wheat; corn; hay; agricultural implements, except hand implements; bagging and ties; binder twine; cans, cases and pails (tin); baskets; chocolate raw materials; dry goods; window glass; glassware (table); horse and mule shoes; oil (refined petroleum); iron and steel pipe; wrapping paper; printing paper; tin articles; wire and nails; door locks; tools, files, and rasps; and on other commodities taking the same rates, respectively, as shown in said Appendix A, than are contemporaneously applied for the transportation of like property for like distances between Texas points, except in those instances in which the rates between Texas points have been depressed by reason of water competition along the Gulf of Mexico or waters contiguous thereto.

178 X. It is further ordered, that said defendants be, and they are hereby, notified and required to establish, on or before November 1, 1916, upon like notice, and thereafter to maintain and apply to the transportation of property between Shreveport, La., and points in the state of Texas, class rates and rates on the above-named commodities not in excess of those contemporaneously applied by them for the transportation of like property for like distances between points in the state of Texas, except in those instances in which the rates between Texas points have been depressed by reason of water competition along the Gulf of Mexico or waters contiguous thereto.

XI. It is further ordered, that said defendants be, and they are hereby, notified and required to cease and desist, on or before November 1, 1916, and thereafter to abstain, from maintaining and applying to the transportation of property between points in Texas the classification provisions at present maintained and applied to such transportation.

XII. It is further ordered, that said defendants be, and they hereby —, notified and required to establish, on or before November 1, 1916, upon like notice, and thereafter to maintain and apply to the transportation of property between points in Texas, the provisions of the current *western* classification in effect at the time such traffic moves.

XIII. And it is further ordered, that this order shall continue in force for a period of not less than two years from the date when it shall take effect.

179 *Original Answer of the Railroad Commission of Texas and Attorney General of Texas et al.*

Plaintiffs introduced and read in evidence the original answer of the Railroad Commission of Texas, Attorney General of Texas, et al., filed in Equity No. 295, in September, 1916, which reads as follows, to-wit:

"Comes now Allison Mayfield, William D. Williams and Earle B. Mayfield, Railroad Commissioners, and composing the Railroad Commission of Texas, and B. F. Looney, Attorney General of Texas, and Wadel-Connally Hardware Company, Defendants in the above styled and numbered cause, and, without waiving their pleas to jurisdiction filed herein, but insisting and relying upon the same,—and make answer herein, and for such answer say:

I.

The allegations contained in the opening and unnumbered paragraph of the Bill of Complaint are admitted, except the allegations to the effect that certain rates prescribed by the Railroad Commission of Texas for intra-state traffic will, lawfully, be affected or superseded by reason of the matters therein stated, which allegation is expressly denied.

II.

The allegation that each of the Plaintiffs is engaged in the transportation of freight, classes and commodities, between the city of Shreveport, Louisiana, and points in the State of Texas, contained in numbered Paragraphs I of said Bill is denied; the remaining allegations thereof are admitted.

III.

Each of the allegations of Paragraph II of the Bill is specifically denied.

IV.

The allegations contained in Paragraph III of the Bill to the effect that in the order mentioned the Interstate Commerce Commission prescribed a tariff of rates to be applied to intrastate transportation in Texas, and the allegation therein to the effect
180 that it will be necessary to use and apply any classification except that prescribed by the Railroad Commission of Texas, are expressly denied.

As to the remainder of the allegations in said Paragraph contained, except as elsewhere in this Answer replied to, limited and explained, Defendants aver that they are without the information necessary to enable them properly to admit or specifically deny the truth thereof, and of the same they demand strict proof.

V.

The allegation in Paragraph IV of the Bill contained to the effect that the rates applicable to intra-state shipments in Texas prescribed by the Railroad Commission of Texas are confiscatory and below compensatory rates, and that by reason of the same Plaintiffs have not been, or are not, able to earn a fair return on the value of their properties devoted to public use, is expressly denied.

The remaining allegations of fact in said Paragraph, except such allegations as he construed to mean that the Railroad Commission of Texas considered any of said tariffs mentioned separately and irrespective of their relation to all other tariffs and matters involved in the application mentioned,—are admitted.

VI.

The allegations of fact contained in Paragraph V of the Bill,—except as herein qualified,—are admitted.

Defendants, however, deny that any of the tariffs, circulars, etc., therein mentioned were permanent, or were intended to be other than temporary pending the final disposition of the case then, and now, pending before the Railroad Commission of Texas, in which case many important tariffs, rates, etc., are still involved and undetermined, the final disposition of which may materially affect said temporary tariff, etc., and cause an alteration thereof.
181 The allegation as to the effect of said temporary tariffs, etc., upon the revenue of Plaintiffs as compared with the preceding tariffs, etc., are not admitted.

VII.

The Defendants have not information sufficient to enable them either to admit or deny the truthfulness of the allegations contained in Paragraph Vs of the Bill, and therefore, demand strict proof thereof.

VIII.

The allegations contained in Paragraph VI of the Bill to the effect that the Interstate Commerce Commission found any particular rates to be reasonable,—except as maxim,—and that the effect of any supposed finding by said Commission was to adjudicate that any rates prescribed by the Railroad Commission of Texas were unjust or unreasonable, and that Plaintiffs are preparing and will file any tariff of rates in accordance with the rates "authorized in said report and order of the Interstate Commerce Commission for application on shipments moving between points in the State of Texas, and between such points and Shreveport" and which rates when so filed will become the lawful rates to be charged on intrastate Texas shipments "to the exclusion of corresponding rates fixed by the Railroad Commission of Texas," and the allegation that it is necessary for the same rates to be charged for similar distances in Texas as are charged between Shreveport and Texas, and that the Interstate Commerce Commission has authority to make any such order as therein described,—are each and all expressly denied.

IX.

The allegation contained in Paragraph VII to the effect that the Railroad Commission of Texas found any of the rates mentioned in Paragraph V of the Bill were reasonable and just rates, for permanent application is expressly denied; and in this connection it is shown that said rates were, and were intended to be, of a temporary nature to be applied during the pendency before
182 the Railroad Commission of said application for a general increase in rates, and subject to revision or repeal upon, and by, the final determination of said application.

That Circular No. 5060 was issued by the Railroad Commission of Texas, as therein alleged is admitted, except that the allegations as to the reasons for the issuance thereof are not admitted but are expressly denied.

The allegations that the issuance of said circular was intended to, or did, have the effect of "an order establishing a system of rates, tariffs, and schedules, and that the former rates, etc., had been finally superseded," is expressly denied.

The allegations attempting to show that said circular was not issued in conformity to law, and was void for lack of authority, are expressly denied; and, on the contrary, Defendants say that the Railroad Commission of Texas had fully authority of law therefor. And in this connection it is shown that said Circular No. 5060 was and is, and was intended to be, only temporary in its character and effect, pending the final determination of said General Application for an Increase in Rates, filed by Complainants, and other which case and application has never been finally disposed of, in whole or in any part, but said application in whole and part is still under consideration by the Railroad Commission of Texas.

and said Commissioners will, upon final determination thereof, grant such relief, as to each and every tariff and rate, etc., there involved as may appear to it to be just and proper, and said Circular No. 5060 was issued for the purpose of preserving, and in effect to preserve, the status quo of all matters involved in said General Application, and because of an emergency condition then existing which, in the judgment of the Railroad Commission of Texas, justified and required such action.

183 The allegation that such Circular does not show what rates it purports "to require plaintiffs to charge, etc.," is expressly denied, and, on the contrary, it is shown that said Circular provides "that all tariffs and orders that were superseded by the tariffs and orders that are hereby cancelled, be and the same are hereby reinstated," which provision, and the meaning thereof, was well-known to each and all of the Plaintiffs, and therefrom they well know what rates, etc., thereafter to charge.

The allegation that the enforcement of Circular No. 5060 would diminish the revenues of Complainants approximately the sum of $75,000 per month is denied.

X.

The allegations of Paragraph VIII. of the Bill are admitted.

XI.

The allegation in Paragraph X. of the Bill that the Interstate Commerce Commission has fixed any absolute rates by the order referred to, and the allegations therein that the rates fixed by the Railroad Commission of Texas and by the Interstate Commerce Commission are too low to enable Plaintiffs to earn a just return are expressly denied.

XII.

Each and every of the allegations contained in Paragraph XI. of the Bill are denied.

It is especially denied that the tariffs and rates, etc., established by the Railroad Commission of Texas are too low to enable Plaintiffs to earn a just return on the fair value of their property, or that such rates, etc., have operated, or do, or will in the future, operate to deprive Plaintiffs of their property without due process of law.

Each and every of the supposed facts and conclusions stated in that portion of the Report, etc., of the Interstate Commerce Commission, referred to in Paragraph XI. of the Bill are expressly denied, and in this connection Defendants say that none of such supposed facts or findings or conclusions are supported by any evidence, or by any sufficient substantial evidence.

184 Defendants deny that the real value of Plaintiffs' properties are as much as alleged in said Paragraph of the Bill.

They say that they have not sufficient information to enable them

to admit or deny the alleged fact that one Thompson testified as stated in said Paragraph of the Bill,—and demand strict proof thereof if such fact be relevant; but they do say if such testimony was given it is immaterial to any issue now involved, and further deny the accuracy of the same as applied to any or all of the properties of Complainants.

They deny that Plaintiffs or any of them are entitled to include in the valuation of their properties for the purposes of this case "six per cent allowed as representing values of going concerns."

They deny that the returns earned by Complainants have been the per centages, or amounts, alleged in said Paragraph of the Bill.

They deny that the rates proposed by the carriers as shown by Exhibit E mentioned in said Paragraph of the Bill were or are reasonable rates, and deny all other material allegations with respect to said proposed rates.

They deny the allegations of said Paragraph of the Bill to the effect that the lines of the Houston & Texas Central Railroad Company and of the Gulf Colorado and Santa Fe Railway Company are typical "of the transportation and commerce of the State of Texas."

They deny that the formula referred to was correctly, or in good faith, applied to the business and transportation of said two companies, and deny the correctness of the results of the application of said formula as described in said Paragraph of the Bill; they further deny that such formula, if mathematically correctly applied in such instances, is correct or leads to correct results under conditions existing in Texas with respect to commerce and transportation, said conditions being wholly different from the conditions in other localities where the correct application of such formula might lead to
185 correct results; they deny that any such proportion of the valuation of Plaintiffs' properties, as is alleged in said Paragraph, are correctly or justly ascribable to Texas intra-state business, and deny that said two companies, or either of them, or any of the Plaintiffs, earned as low a return upon their intra-state business as is there alleged.

And of each and every allegation in said Paragraph contained, Defendants demand strict proof.

XIII.

Defendants deny the truth of the allegations contained in Paragraph XII. of the Bill to the effect that the rates established by the Railroad Commission of Texas "are much lower than they should be," and deny that the rates cancelled by Circular 5060 have been adjudicated to be reasonable rates for permanent application, such rates, as aforesaid, being simply temporary rates applicable during the pendency of said General Application before the Railroad Commission of Texas.

XIV.

Each and every of the allegations of Paragraph XIII. of the Bill are denied.

XV.

Each and every of the allegations of Paragraph XIV. of the Bill are denied.

XVI.

The allegations of fact of Paragraph XV. of the Bill are denied.

Further and Special Reply to Paragraphs III, Va and VI of the Bill.

XVII.

Defendants say that the matters set forth in Sub-division- III, Va and VI of the Bill do not entitle Plaintiffs to the relief prayed by reason thereof, because:

186 (1) Said order of the Interstate Commerce Commission, of date July 7th, 1916, does not have the meaning or effect ascribed to it by Plaintiffs with respect to Texas Intrastate rates because, as is apparent therefrom, said order merely prescribes maximum rates to be applied on inter-state traffic and authorizes,—or at least does not prevent,—Plaintiffs or any of them to remove any discrimination against Shreveport by so reducing their interstate rates, below said *maxima*, or otherwise, as may be necessary, without disturbing intrastate rates prescribed by the Railroad Commission of Texas. And it is necessary and proper so as to construe said order because:

1. Of the matters set forth in Sub-Division XVIII of the Answer, which matters are here referred to and made a part hereof;

2. Congress had not the power to authorize said Inter-state Commerce Commission to make an order in the premises going further than this, and Congress has not attempted to authorize said Commission to make an order in the premises going further than this but, on the contrary, has expressly limited the jurisdiction of said Commission under such conditions as follows:

(1) If "the Commission shall be of opinion that any individual or joint rates or charges — for the transportation of persons, or property — as defined in the first section of this Act" (that is: "from one State or Territory of the United States — of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country, to any other place in the United States, etc.; and not "the transportation of passengers or property * * * wholly within one State") "are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act," then, in that event,—

187 (2) The Commission is empowered 'to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged" and thereupon to make

an order that the carrier 'shall not thereafter publish, demand or collect any rate or charge for such transportation (that is: the transportation define- in Section 1 of the Act) * * * in excess of the maximum rate or charge so prescribed;" and,—

(3) The Commission is not empowered to fix or regulate the minimum rate, or rates, directly or indirectly, and to give the effect and meaning claimed for it herein by Complainants would be to hold that the Commission not — prescribed *not prescribed* maximum rates but minimum rates also.

(4) That jurisdiction of the Commission over violation of Section 3 of the Act is limited by the Act itself to the making of an order requiring the carrier to "cease and desist from such violation to the extent to which the Commission finds the same to exist." And, therefore, since the jurisdiction of the Commission over rates is limited to fixing maximum rates for transportation defined in Section 1 of the Act, and since its jurisdiction over discrimination as defined by Section 3 is limited to requiring the carrier to desist therefrom, the carrier, so far as the jurisdiction of the Commission is concerned, is free to desist from such discrimination by alteration of its inter-state rates within the maximum prescribed to the extent necessary; and,—

(5) Since the authority of the State to regulate intrastate rates, and the lack of jurisdiction of the Interstate Commerce Commission over intra-state rates, as expressly recognized in Section 1 of the Act, the carrier must remove the prohibited discrimination by alteration of its inter-state rates, and must comply with intra-state rates otherwise validly established, and the Interstate Commerce Com-
188 mission has no jurisdiction over the question of whether the carrier shall remove the prohibited discrimination by raising its intra-state rates, or by lowering its inter-state rates to a certain extent, and at the same time lowering its *inter-state* rates to a certain extent. The power of the Interstate Commerce Commission is exhausted when it:—First, prescribed maximum inter-state rates, and, Second, when it orders the carrier to remove the discrimination. And if the order should be construed, of itself, to require the Complainants not only to observe the rates prescribed by the Commission not only as maximums, but also as minimums, and to require the carriers not only to remove the discrimination but to remove it in a specific way,—i. e. by ignoring the rates prescribed by State authorities and applying higher intra-state rates,—then the order transcends the authority of the Commission, to that extent, and to that extent it is, therefore, void.

(II) Said order of the Interstate Commerce Commission hath not the effect claimed for it herein by Plaintiffs, and does not entitle them to the relief prayed, for that the Interstate Commerce Commission,—First,—Did not therein or in connection therewith undertake to, and did not, pass upon the question of the reasonableness and justice of the intra-state rates complained of, and a finding that certain interstate rates were reasonable and just,—if there was such a finding upon sufficient evidence, which is not admitted but denied,—was not and is not tantamount to, a finding that intra-state rates are un-

reasonable and unjust; both rates might be different and still both be just and reasonable; Second,—said Commission has no jurisdiction, and, by Section I of the Act, is expressly denied jurisdiction, to pass upon the question of the reasonableness of intra-state rates, and if — did so, or undertook to do, in, or in connection with, said order, then said order to that extent is void and of no force and effect.

189 Therefore, Defendants say, that said order of the Interstate Commerce Commission, or the other matters set forth in the Bill, do not entitle Complainants to the relief prayed, or any relief, at least until it be shown herein that the intra-state rates complained of are, of themselves, unreasonable and unjust which condition Defendants expressly deny as to each and all of the rates so complained of, and demand strict proof thereof.

Defendants say, further, that, until it be made sufficiently to appear herein that the intra-state rates complained of are of themselves unreasonable and unjust Complainants are, and will be, compelled to remove the discrimination dealt with in said order, by necessary alteration of their inter-state rates,—and in this connection Defendants refer to and make a part hereof the matter set forth in — of this Answer.

In connection, also, in the event it should be held that said alleged finding by the Interstate Commerce Commission to the effect that certain inter-state rates were reasonable and just and that such finding also involved a finding that the intra-state rates in question were unreasonable and unjust, the defendants say that such finding was made without any substantial evidence, and without sufficient evidence, to support it, and the same is, therefore, void and not binding upon Defendants herein. In this connection Defendants, also, refer to and make a part hereof the matters set forth in — of this Answer.

(III.) The order hath not the effect claimed for it by Complainants herein, and does not entitle them to the relief prayed for that, if otherwise valid, it applies, can lawfully only apply, and should be held herein to apply (with respect to its effect if any upon intra-state rates), only to such particular rates and such particular places, and under such particular conditions, as involve an actual present discrimination against Shreveport, because, First, the jurisdiction of the Interstate Commerce Commission is limited to cases, rates,

190 and conditions, or actual present discrimination by the Act itself and does not extend to imaginary, hypothetical and distinctly future discrimination, and, Second, if such order was intended to apply, and does apply, to rates, places, or conditions which do not, and which did not at the time of the making of such order, involve actual discrimination, the same is, to that extent void, and Third, if said order has the application claimed for it herein, and if it be held to involve a finding that actual discrimination against Shreveport results from the application of the intra-state rates claimed throughout Texas,—without regard to distances from Shreveport, localities, competitive and other local conditions throughout widely separated portions of Texas,—then such finding is void because not supported by any evidence, because plainly in the *fact* of

all evidence, because contrary to commonly known economic, geographical, and historic facts, and because repulsive to all reason.

With respect to said alleged "finding," also, Defendants show that, as is apparent from said order and the report accompanying it, no specific finding of fact of discrimination as to any particular rate, or place, but said alleged finding amounts to nothing more than a general conclusion of law unsupported by any specific finding of fact.

Now, Defendants show unto the Court, that said order, as construed by Complainants herein,—and upon which construction their prayer is predicated,—is sought to be made to apply to all of Texas, and is sought as justification for setting aside all Texas intra-state rates, except "the existing rates between these water competitive points along the Gulf of Mexico or the existing relationship between the rates from and to such Gulf points and the rates from and to Houston, Beaumont, Sabine Pass, and other similar basing points," although the only poertion of Texas in which there is, ever has been, or can be any competition between Shreveport shippers is a comparatively small strip of Texas territory lying east of Dallas
191 and Ft. Worth, Texas, and northeast and east of Houston, Texas, and the Texas-Louisiana Line. There was no evidence before the Interstate Commerce Commission, before the making of said order, to show that any competition did, or could, exist between Shreveport and Texas cities outside of said restricted territory, or that the Shreveport shippers shipped their wares beyond said restricted territory, unless in very exceptional cases. The location and other natural and economic advantages of Texas cities and business centers necessarily, and do as a fact, limit the trade of Shreveport in Texas to a restricted district, and because of the premises said order, even though it were given the board application *application* claimed for it, would not, and could not, substantially affect the volume of profitableness of Shreveport's trade in Texas beyond such restricted areas for the manifest reason that the Texas cities to the west and southwest of Shreveport would,—regardless of the rate,—retain their natural advantages of location, etc., as a barrier to Shreveport's trade just as cities *States* to the east, north and south of Shreveport have such natural advantages over Shreveport in those directions.

(IV.) Said order is void in its entirety because,—

1. The finding of the existence of discrimination upon which the order, is based was made without any substantial evidence, and is not supported by any sufficient substantial evidence;

2. The finding that the maximum rates prescribed are just and reasonable is not supported by any substantial evidence, or by any sufficient substantial evidence;

3. Each of said findings, and said order in every part thereof, is arbitrary and unreasonable;

4. Said order, and findings, manifestly, proceed upon the theory, and were made because of the Commission's erroneous conception and application of law, that the carriers would have the right under said order to set aside intra-state rates and to charge rates for

192 intra-state transportation, notwithstanding the authority of the State of Texas, through its Railroad Commission, to prescribe and enforce rates on intra-state traffic, and it is obvious that said order would not have been made but for this erroneous conception and application of law;

5. Said order is void because it is based upon an arbitrary and unsupported finding that intra-state rates as then and now applied throughout Texas, as compared to the applied inter-state rates, operate as a discrimination against Shreveport and an arbitrary and unsupported finding of discrimination against Shreveport in every part of Texas, notwithstanding many of the carriers affected do not ser-e and have never served Shreveport directly or by participating in any joint rate or through route, thereto and therefrom, and notwithstanding the fact that in the vast majority of towns, cities and localities in Texas where said Commission attempts to find discrimination against Shreveport, no merchant or shipper of Shreveport has ever done, does now, or ever will do any business.

6. Said order is void because the finding upon which it was made was made for the purpose of enabling the interstate Commerce Commission, to take and exercise the jurisdiction denied it by Section 1 of the Act to prescribe, regulate and control rates and classifications for purely intra-state freight transportation in Texas and for the purpose of enabling said Commission, thus,—by indirection,—to impose upon Texas intra-state traffic unreasonable and unjust rates and classifications.

7. While on the face of the Record the Railroad Commission of Louisiana, at the instance of the Shreveport Chamber of Commerce, was Complainant or Petitioner, the carriers affected were the real and substantial Petitioners, and were and are the real and substantial beneficiaries of said order as is shown in part by the following allegation of Paragraph VI of the Bill.

193 "The rates found in said order of Interstate [Commerce]* Commission of July 7, 1916, * * * to be reasonable rates * * * will if applied, as permitted by said report and order of the Interstate Commerce Commission, to shipments moving between points in the State of Texas, yield in revenue to plaintiffs several million dollars per annum more than they would, or could earn under the application to the same business or shipments of the rates prescribed by the Railroad Commission of Texas."

And whether such proceedings before the Interstate Commerce Commission were collusive or not, an order such as this, which would impose upon Texas intrastate transportation such burdens additional to the reasonable and just rates prescribed by the Railroad Commission of Texas, based upon an arbitrary and unsupported finding of discrimination in thousands of localities where no such discrimination has ever existed, does not now exist, or ever will exist, is arbitrary, unreasonable, unsupported by any substantial evidence, and is beyond the power delegated to said Commission and involves the

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exercise of power expressly denied to said Commission by Section I of the Act regulating Interstate Commerce, and is, therefore, void.

XVIII.

Plaintiffs are estopped to take advantage of the matters and things pleaded in Sub-Division- III, Va, VI, and to claim and receive the relief prayed for in Paragraphs "Second," "Third," "Fourth," of Sub-Division XV of their Bill of Complaint, for that under and by virtue of certain contracts made between them and the State of Texas, under which the State of Texas parted with, and Complainants received, many valuable considerations, and under certain Constitutional and statutory provisions of the State of Texas upon which the receipt and retention of the many valuable franchises now, and heretofore held by Complaina-ts and which were, and are, and will continue to be, conditions in and of their charters, the right of the Complaina-ts, and each of them, to retain and enjoy such
194 franchise, and especially the right to charge and collect tolls, freights, and fares upon intrastate transported over their railroads, is subject to the laws of the State of Texas and such rights depend upon the authority of the State of Texas and, therefore, to permit the Complainants, or any of them, to divest themselves of the right of the State of Texas to regulate and control intrastate rates,—as long at least as such rates are not confiscatory,—would be to permit them to challenge the validity and binding force of the laws of their creation, to retain all the benefits of such laws, and said contracts, and at the same time to deny the burdens attached to the grant of such benefits and rights. In this connection, Defendants show unto the Court the following.

(I) Section 3 of Article I of the Constitution of Texas provides that no "exclusive separate public emoluments, or privileges" shall be granted "but in consideration of public services."

Section 17 of Article I of said Constitution provides that "no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof."

All of the franchises, including the right to construct or acquire and operate railroads in said State and to charge and collect fares and freight for the use thereof, with respect to intrastate business,—at least,—of the Complainants and each of them were granted by the Legislature or under its authority.

Section I of Article 10 of said Constitution grants the valuable right to "any railroad corporation, organized under the law for the purpose," to construct and operate a railroad between any points within the State, and Section 2 of said Article declares such railroads to be public highways and such companies common carriers.

Section 1 of Article XII of said Constitution declares that "no private corporation shall be created except by general laws,"
195 and Section 2 thereof, provides that general laws shall be enacted providing for the creation of corporations wherein the

Legislature shall "provide fully for the adequate protection of the public."

Section 5 of Article XII of said Constitution provides that "all laws granting the right to demand and collect freights, fares, tolls or wharfage shall at all times be subject to amendment, modification or repeal by the Legislature," and Section 3 of said Article provides "that the right to authorize and regulate freight, tolls, wharfage or fares levied and collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, etc., devoted to the public use, has never been and never shall be relinquished or abandoned by the State, but shall always be under Legislative control and depend upon Legislative authority."

Section 4 of Article XII commands the Legislature to provide a mode of procedure "by the Attorney General and District and County Attorneys in the name and behalf of the State to prevent and punish the demanding and receiving or collection of any and all charges, as freights, wharfage, fares, or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law," and Section 22 of Article IV of said Constitution requires the Attorney General to inquire into the charter rights of Private Corporations and "from time to time to, in the name of the State, *to* take such action in the courts as may be proper and necessary to prevent *and* Private Corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage, not authorized by law."

By Section 2 of Article X the Legislature is empowered and commanded to "pass laws to regulate railroad, freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate 1951½ penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable," under which last quoted clause the Legislature has created the Railroad Commission of Texas and vested it with certain powers with respect to freights and rates, etc., to be charged for intrastate transportation, which Commission, pursuant to such powers, has established rates for intrastate freight transportation and the rates complained of herein by carriers.

By Section 3 of Article X of said Constitution it is provided that "no railroad corporation in existence at the time of the adoption of this Constitution (in 1876) shall have the benefit of any future legislation, except upon complete acceptance of all the provisions of this Constitution applicable to railroads."

Some of the carriers were created prior to the adoption of said Constitution by each and all of such having accepted and received the benefits of legislation enacted since that time,—including the exercise of the pow*e*r of eminent domain, and many other valuable rights and powers,—and have thereby become fully subject thereunto. All of the carriers and the corporations whose properties are

in the hands of receivers who are complainants herein, created sin
the adoption of said Constitution, have been created under Gene
Laws of the State and thereby became subject to said Constitutio
provisions and the laws enacted thereunder.

Each and all of said Constitutional provisions which are not s
executing have been carried into effect by appropriate State legis
tion.

That under such Constitutional provisions each and all of the c
riers accepted and retained, and now have and enjoy, the franchi
rights granted them by the State, including the right to collect fa
and freights for intrastate transportation, and such franchi
196 and rights were accepted and are retained upon the expr
condition and contract that the Legislature of the State, a
its agency the Railroad Commission of Texas, have, and shall alwa
have, the right and power to regulate and control the amount a
conditions of freight and passenger rates, classifications, etc., and t
collection thereof, with respect to intrastate transportation, and th
no such rates and charges shall ever be made or collected unless t
same shall have been specially authorized by the Legislature or
agency, and the right to collect the same depends upon the authori
of the Legislature of the State, and its agency, as to the amounts a
conditions thereof. But that, notwithstanding the premises, t
Complainants herein claim the power and right to collect such rat
etc., not in accordance with such State authority, but in defiance
the same, and under the supposed authority of an agency not t
Legislature and not acting under the authority of the Legislatu
and such right and power Complainants say they are estopped
claim or exercise.

(II.) The charter of each of the carriers created prior to 1870 w
granted by special Acts of the Legislature of Texas and in each
such Acts, and Acts supplementary thereunto, and by general Sta
laws in force at the time of the granting of such charters,—and su
ject to which such charters were granted,—the right of the Sta
through its Legislature, and legislative agencies, to fix, authorize a
control the rates,—the amounts and conditions thereof,—of intr
state freight and passenger transportation was expressly or implied
retained as a condition and part of such charters and the rights a
franchises granted thereby and by subsequent legislation. Those
the carriers created since 1876, as aforesaid, were chartered under t
General Corporation Laws of the State,—and such charters we
granted by the State—accepted by the Complainants subject to all ge
eral laws then in force governing railroad corporations and especial
subject to law expressly and impliedly retaining to the Sta
197 and its Legislature and legislative agencies the right to pr
ern, control and regulate the amount and conditions of i
trastate freight and passenger transportation, and making the rig
to collect the same depend upon State legislative authority, amon
such statutory laws enacted in 1876 and continually since in for
and now contained in Article 6543, Revised Statutes, 1911, is th
following:

"Such corporation shall have the right to regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject nevertheless to the provisions of this or any other law that may hereafter be enacted."

But notwithstanding the premises, the Plaintiffs now, after having accepted and enjoyed, and proposing in the future to retain and enjoy, the many valuable rights and franchises conferred upon them by the State, propose to disavow and divest themselves of the burdens and conditions upon which such rights and franchises were granted and allowed to be retained, and as to intrastate freight and passenger transportation divest themselves of the controlling jurisdiction of the State and to substitute therefor their own volition controlled,—so far as may be,—by the jurisdiction of an agency not the Legislature of Texas and not created or acting under the authority of the Legislature of Texas,—and this, Defendants say, they are estopped to do.

(III.) In addition to the matters set forth in Paragraphs "(I)" and "(II)" of this Sub-Division hereof, many of the Complainants, upon the express and implied condition that their franchises and the rights to collect freights and fares for intrastate freight and passenger transportation should depend upon the authority of the Legislature of Texas, and its agencies, as to the amounts and conditions thereof, received from the State of Texas more than 32,000,000 acres of land from the public domain belonging to the State. A list of such lands so granted and received by each of the Complainants is con-
198 tained in Exhibit — filed herewith. Such lands when granted were worth many millions of dollars to Plaintiffs, and their predecessors in interest, and one of the conditions and considerations for such grants was that the public of Texas, desiring to ship or travel in intrastate movements, should have the advantage of railroad transportation upon reasonable terms and at reasonable rates, and that in order to secure and guarantee the same the State, through its Legislature and legislative agencies, should forever have the right and power to control the amounts and conditions of rates therefor and to have the right to collect therefor always upon State authority. This right and power of the State was expressly or impliedly retained in all laws under which such grants were made, and among such laws was and is the following—

Chapter CI, Acts of the Fifteenth Legislature, convened April 18, 1876, provided for grants of sixteen sections of land out of the public domain to railroads for each mile of road constructed and put in running order. The Act contained the following provisions:—"Provided, that the State shall retain the right to regulate the rates of freight and passenger fare by general law on all roads accepting a grant of land under this Act." As stated before there were other laws in force continually since prior to the incorporation of any and all of the companies.

If it be true that the properties and franchises of some of the companies which received land grants from the State have been sold, nevertheless such assets came into the hands and possession of some of the Complainants charged with all the duties, burdens and restrictions placed upon the original companies and their properties.

Such companies received said lands as aforesaid, and received t
benefits thereof and the proceeds of such lands as may have be
alienated, and those who received such lands are still receiving,
rectly or indirectly the benefits thereof, and those of the Plai
199 tiffs who succeeded to the ownership of the properties of oth
companies who received such land grants have, in the past, r
ceived, do now receive, and will continue to receive, directly or ind
rectly, the benefits thereof. And this is especially true of the Plai
tiff-, the Houston & Texas Central Railroad Company, Texas & N
Orleans Railroad Company, Texas and Pacific Railway Compan
and others, as is more specifically alleged in Sub-Division — of th
Answer, which allegations are here referred to and made a pa
hereof.

But notwithstanding the premises, the Complainants, and such
them as received such land grants, or the benefits thereof, as afo
said, are now seeking to have the conditions, considerations a
burdens upon which such grants were made set aside and render
null and void, without returning, or offering to return, to the Sta
of Texas such lands, or the proceeds and benefits thereof, and the
lief prayed by them, if granted, would operate to defeat one of th
material considerations and conditions upon which such grants we
made by the State by freeing such Complainants of the right of th
State, through its Legislature and legislative agencies, to authori
and control freight and passenger rates, and the conditions of the
application, or intrastate traffic. Defendants say that Complainan
because of the premises, are not entitled to such relief and are
topped to sue for and receive the same.

Wherefore, Defendants say: That the order of the Interstate Co
merce Commission referred to does not authorize the Plaintiffs,
any of them, to set aside, or have set aside, or ignore and refuse
apply the rates prescribed by the Railroad Commission of Texas, a
the laws of Texas, with respect to intrastate traffic, and does not a
thorize them, or any of them, to apply on intrastate traffic any oth
rates than those so prescribed by State authority, because:

(1) Said order of the Interstate Commerce Commission does n
require, or purport to require, the Plaintiffs, or any of the
200 to apply higher, or lower, or different, rates to intrast
traffic than those prescribed by State authority, but said ord
permits them to prescribe and apply such rates to interstate traffic
will have the effect of removing the supposed discrimination de
with in said order.

(2) If such order of the Interstate Commerce Commission is s
ceptible of the construction that it requires the Complainants, in
moving such supposed discrimination, to apply different rates to
trastate traffic than those prescribed by State authority, nevertheles
it is also susceptible to the construction that it permits such d
crimination to be removed by alteration of interstate rates, and,
view of the premises, precedent and subsequent,—in this Sub-D
vision set forth, such order ought to be given the latter construc
and for such relief Defendants pray.

(3) If such order of the Interstate Commerce Commission is s

ceptible of the construction that it requires the Complainants, or any of them, to apply rates on any part of their intrastate traffic different from the rates so prescribed by State authority, and such should be held to be the correct construction thereof, then such order should be construed to mean that such different rates are to be applied only where, and when, the application of the rates prescribed by State authority would operate to produce an actual discrimination in fact against the locality or shippers of Shreveport and should be construed not to apply when and where and under conditions where no actual discrimination in fact does or would result,—and for such alternative relief Defendants pray.

D. If said order of the Interstate Commerce Commission has the effect, and was meant to have the effect, claimed for it by Complainants herein, or was meant to have, or has, any effect other than as described in Sub-Paragraphs "A" "B" and "C" last above, then the same is to such extent void and of no binding force, and entitled Complainants to no relief herein, for that:—

201 (1) Congress has not conferred upon the Interstate Commerce Commission authority to that extent to impair, nullify, and set aside said State laws and contracts and the obligations thereof.

(2) Congress has not attempted to confer upon said Commission — to base such an order upon purely hypothetical, theoretical and imaginary discrimination, and said order is void to the extent that it goes beyond actual discriminatory conditions.

(3) If it be held that Congress has attempted to confer such authority upon such Commission, then such delegation of authority is void.

202 *Further and Special Reply to Paragraphs IV, V, VII, X, XI of the Bill.*

XIX.

In the year of 1858 the State of Texas made provision for the future acquisition of the franchises and properties of railroads thereafter constructed in Texas, which statute has been continually in force and is still in force, and subject thereto the franchises of each and all of the Plaintiffs,—except the Texas & Pacific Railway Company,—were granted by the State, and subject to which all of the properties of the Plaintiffs in Texas have been since acquired. Said statute reads as follows:—

"If the Legislature of this State shall at any time make provision by law, for the repayment to any such company of the amount expended by them in the construction of said road, together with all moneys for permanent fixtures, cars, engines, machinery, chattels and real property, then in use for the said road, with all moneys expended for repairs or otherwise, and interest on such sums at the rate of twelve per centum per annum after deducting the amount of tolls, freights, passage money, and all moneys received from the sale of lands donated by the State to said company, with twelve per centum per annum interest on all such sums, then the road with all its fixtures

and appurtenances aforesaid, and all the lands donated to the said
by the State and remaining unsold, shall vest in and revert to the
State; provided, that the State shall not be required to pay, or allow
a greater rate of interest on any amount of the money so expended by
any company which shall have been borrowed from this State, than
the State, shall have received for the same from such com-
pany."

203 Defendants say that said statute, and the acceptance of the
benefits of subsequent legislation by the Plaintiffs, and
especially the acceptance and receipt of the lands hereinafter men-
tioned, constituted and does constitute a contract between Plaintiffs
and each of them, and the State of Texas, under which statute and
contract the State of Texas has acquired certain equities and rights
amongst which equities and rights are those next mentioned herein
which must be considered herein upon the question of whether or
not the rates complained of are confiscatory as alleged. In this con-
nection, Defendants show unto the Court the following:—

(1). That "the amount of tolls, freights, passage money, and all
moneys received from the sale of lands donated by the State to said
Company (some of the Plaintiffs and their predecessors in interest)
with twelve per centum per annum interest on all such sums" not
exceed the "amount expended by them in the construction of said
road, together with all moneys for permanent fixtures, cars, engines,
machinery, chattels and real property—with all moneys expended
for repairs or otherwise, and interest on such sums at the rate of
twelve per centum per annum."

(2). That by reason of the premises the equitable title to the
properties of the Plaintiffs is in the State of Texas and the Plain-
tiffs' rights to retain and operate said properties is at the sufferance of
the State, and the Plaintiffs, therefore, have no lawful or equitable
right to demand intrastate rates high enough to enable them to earn
a profit upon property to which they hold a mere legal title.

(3). That as shown in other portions of this Answer, the State of
Texas, while the aforesaid statute was in force, donated to many of
the Plaintiffs (and their predecessors in interest) many millions of
acres of land, of a reasonable value of many millions of dol-
204 lars, the intention of the State and of the grantees of such
lands, and the contract and conditions under which such lands
were donated and received, were that such lands and the proceeds
thereof should be converted into railroad properties for the use of
the public of Texas, and should be reflected and represented in the
values of such properties, and the same are so represented. That
the effect of the grant and acceptance of such lands was that the
State of Texas invested, or loaned its assets, to the extent of the value
of such lands to Plaintiffs, and their predecessors in interest, for such
purposes, and now has an equitable interest in such properties to the
extent of such values, and the Plaintiffs have no right to have such
values included in the values of their properties upon which they have
the right to earn a return, and in passing upon the question of the
reasonableness of the rates complained — such values should be
deducted from the total values of the properties operated by Plaintiffs.

(4). That a list of lands so granted by the State of Texas to railroad companies,—Plaintiffs, and companies whose successors in interest Plaintiffs are,—is contained in Exhibit No. — filed herewith as a part hereof.

Defendants show that the following Plaintiffs, towit—
Houston, East & West Texas Railway Company;
Texas & New Orleans Railroad Company;
Galveston, Harrisburg & San Antonio Railway Company;
Galveston, Houston & Henderson Railway Company;
Eastern Texas Railroad Company;
Gulf, Colorado & Santa Fe Railway Company;
Texas & Pacific Railway Company;
Texas Mexican Railway Company;
Texas Midland R. R. Co.;
Missouri, Kansas & Texas Ry. Co. of Texas,
And others of Plaintiffs,

received directly from the State of Texas many acres of such lands, and some or all of them received, indirectly from the State of Texas, through acquisition of the franchises and properties of other railway companies to whom lands had been so granted, many other acres of such lands and the proceeds and benefits thereof, and still have and enjoy the proceeds and benefits of all such lands.

Defendants show unto the Court that they cannot now allege an accurate and detailed history of the possession, disposition, etc., of said lands and the proceeds thereof, for the reason that the records thereof are in other States and not accessible to them, but the facts thereof are well known to Plaintiffs and they are in a position to furnish the Court with such information, and Defendants pray that they each and all be required to do so herein.

Defendants do say, however:—

(a). That much of said lands or the proceeds thereof are now owned, directly or indirectly, by the Plaintiffs and are included, in some form, in the present real values of their properties;

(b). That the proceeds of much of said land which has been sold constitute funds, in the hands of Plaintiffs or trustees, out of which the bonds, in whole or part, of the Plaintiffs are to be paid, or have been paid;

(c). That whatever may have been, or may be, the form or manner or location of the legal title to said lands, and the proceeds thereof, the Plaintiffs have been, are, and will continue to be, directly or indirectly, the real beneficiaries thereof;

(d). That whatever may have been the history of such lands so granted, and whatever form the legal title thereto may have assumed, the value of such lands, and the proceeds thereof, should be held to be represented in and included in the present real values of such lands and the properties, and the values of such lands and the proceeds thereof should be deducted from the present real values of Plaintiffs' properties in determining the value of the properties upon which Plaintiffs are entitled to earn a return from intrastate rates.

Defendants pray, further, that each of the Plaintiffs which has received, directly or indirectly, any of such lands, or the proceeds or benefits thereof, or whose bonds or other indebtedness has been or will be paid or satisfied, in whole or in part, by such proceeds, directly or indirectly, be required herein to give a complete accounting thereof showing in detail the amount of such lands received by each of them or their predecessors in interest, the amount of such lands still in their possession, the amount of such lands or proceeds in the hands of trustees for their benefit or the benefit of their creditors or stockholders, and all other relevant facts touching the receipt, history, disposition, or present status of said lands or any of them, and the proceeds thereof.

XX.

Defendants say that each and all of the Plaintiffs, and their predecessors in interest, received from individuals, counties, towns and communities large sums of money as donations, and large amounts of lands as donations, which sums and lands, and the proceeds thereof, were used, or should have been used, in the construction and equipment of said roads, and are, therefore, represented, and should be held to be included, in the present real values of their properties, and the amounts thereof should be deducted from the present real values of such properties in estimating the values upon which Plaintiffs are entitled to earn returns, and for such relief Defendants pray.

207 Defendants cannot now accurately allege the amounts of such donations, but the amounts and histories thereof are well known to Plaintiffs, and Defendants pray that upon the hearing hereof they, and each of them, be required to make a complete accounting thereof, showing the amounts of such donations, when in money, and the value thereof when in land or other property, and the disposition thereof in each instance.

XXI.

Defendants, reiterating their allegation that the rates, etc., complained of by the Plaintiffs are not unreasonably low, say that the failure of the Plaintiffs, or any of them, to receive a fair and just return upon their investments, etc., if such failure there has been as alleged, which is not admitted, but is denied, is not due to the existence and application of the rates, etc., complained of, but is due to other causes not attributable to the laws of Texas, or the orders etc., of the Railroad Commission of Texas, among such other causes being the following:—

(I.)

Such failure is due, to a substantial extent, to the failure of the Plaintiffs to receive a due, proper, or just revenue out of their interstate traffic, freight and passenger. Defendants do not allege that interstate rates, etc., applied by Complainants are unreasonably low

or non-compensatory in themselves, but they do say that Complainants have not received, do no- receive, and probably will continue not to receive for such service the full proportion of the total revenues derived from such interstate traffic which they should properly and justly receive, by reason of unfair divisions, and other causes now unknown to Defendants, and that one reason for the receipt of such undue and inadequate proportions of such revenue is due, in part at least, to the domination and control of the principal, if not all, of the Complainants by "Parent Corporations" which have the ability
208 to control, and do control, through their control of Plaintiffs, the routing of such traffic, the divisions thereof, and other matters.

And in this connection, Defendants show unto the Court the following:

1. That fifty per cent, or more of the values of the properties of the Plaintiffs, and each of them, is used in and devoted to their interstate traffic.

2. That it costs the Plaintiffs, and each of them, approximately as much per ton, and per ton per mile, and per passenger, and per passenger per mile, to handle their interstate traffic as it does to handle their intrastate traffic.

3. That for the seven years of 1909 to 1915, inclusive, as representative of modern traffic conditions in Texas, all of the railroads of Texas handled:

a. Sixty-seven million, Six Hundred thirty-three thousand, Six Hundred fifty-three (67,633,653) tons of intrastate one-line freight, an average distance of 86.99 miles per ton, or a total distance of 5,874,380,810 ton miles, and received therefor $112,219,786, or an average revenue per ton per mile of 1.911 cents.

b. Eighty-five million, Thirty-six thousand, One Hundred forty-three (85,036,143) tons of "interline-intrastate" freight an average distance of 121.52 miles per ton, or a total distance of 10,311,713,186 ton miles, and received therefor $114,142,492, or an average per ton per mile of 1.109 cents.

c. Therefore, a total of 152,669,796 tons of intrastate freight, an average distance of 106 miles per ton, or a total distance of 16,186,093,996 ton miles, and received therefor a total revenue, freight strictly, of $226,362,278, or an average revenue per ton per mile of 1.398 cents.

209 *d*. One Hundred ninety-seven million, One Hundred ninety-three thousand and ninety-one (197,193,091) tons of interstate freight an average distance of 153.01 miles per ton, or a total distance of 30,183,509,384 ton miles, and received therefor a total revenue of $259,499,683, or an average revenue per ton mile of .862 cents.

(The facts stated in sub-paragraphs "*a*," "*b*," "*c*" and "*d*" hereof, and the details thereof as to each and all of Complainants are shown in Exhibit No. 26 filed herewith).

e. One hundred seventeen million, Seven Hundred fifty-six thousand Four Hundred eighty (117,756,480) one-line intrastate passengers, an average distance of 40.05 miles, or a total distance of

4,700,055,362 miles, and received a total revenue therefor of $11[illegible] 871,830, or an average per passenger mile of 2.515 cents.

f. Nine million, Seven Hundred sixty-one thousand, Six Hu[illegible] dred and six (9,761,606) "interline" intrastate passengers, an ave[illegible] age distance of 89.85 miles per passenger, or a total distance [illegible] 876,726,375 passenger miles, and received total revenue therefor [illegible] $19,433,357, or an average per passenger mile of 2.213 cents.

g. Or (combining "*e*" and "*f*" above), they carried intrasta[illegible] passengers a total of 5,576,781,697 miles and received total revenu[illegible] therefer of $137,710,187, or an average per passenger mile of 2.4[illegible] cents.

h. Seventeen million, Nine Hundred fifty-five thousand, Six Hu[illegible] dred eighty-two (17,955,682) interstate passengers an average di[illegible] tance of 118.61 miles per passenger, or a total distance of 2,129,
951,157 passenger miles, and received a total revenue therefo[illegible]
210 of $42,800,282, or an average of 2.0105 cents per passenge[illegible] mile.

(The facts stated in "*e*," "*f*," "*g*" and "*h*," supra, and the detail[illegible] thereof as to each and all of the Complainants appear in Exhibi[illegible] No. 25 filed herewith).

And therefore:

i. The relation of freight revenue per ton mile, derived fro[illegible] intrastate business, as compared with interstate business, is as 1.62[illegible] is to 1.000, and the relation of passenger revenue per passenge[illegible] mile derived from intrastate business, as compared with interstat[illegible] business, is as 1.223 is to 1.000.

j. Of the total service performed in hauling the total of Sta[illegible] and interstate freight the total of 46,319,603,380 ton miles, onl[illegible] 37.1 per cent thereof was for intrastate freight, and 62.9 per cen[illegible] thereof was for interstate freight; while of the total revenue de[illegible] rived from State and interstate freight (485,861,914), 46.3 pe[illegible] cent was for State, and 53.7 per cent was for interstate.

Of the total service in transporting the total number of Sta[illegible] and interstate passengers a total of 7,706,782,854 miles, 72.3 pe[illegible] cent thereof was for State, and 29.7 per cent was for interstate pa[illegible] sengers, while of the total revenue therefrom ($180,510,469) 76.[illegible] per cent was from State and 23.7 per cent was from interstate pa[illegible] sengers.

k. In addition to the revenues derived from intrastate traffic, [illegible] described above, Plaintiffs, and each of them, annually derive mat[illegible]
thousands of dollars per annum from special service of di[illegible]
211 ferent kinds, which revenues arise wholly, or almost whol[illegible] from intrastate commerce. Defendants cannot now acc[illegible] rately allege the amounts thereof, but the same will be made to a[illegible] pear upon hearing hereof.

XXII.

Defendants say that Plaintiffs have no right to have the ra[illegible] tariffs, etc., complained of set aside, and are estopped to attack t[illegible] same, upon the ground that the existence and enforcement of s[illegible]

rates, tariffs, etc., deprives them of the right and power to earn and receive a fair return upon their investment, because under the said rates, tariffs, etc., and under the laws of the State, the plaintiffs have, and have had for many years past the lawful right to make sufficient charges to yield such returns, and, instead of exercising such rights, the Plaintiffs have, voluntarily, and without any compulsion of law, reduced the rates upon a large portion of their intrastate traffic, and have voluntarily applied such reduced rates to such an extent as to deprive themselves, voluntarily, of many millions of dollars per year in aggregate revenues; and if it be true,—which is not admitted, but denied,—that Plaintiffs have not in fact received adequate returns, such inadequacy of returns has been, and is, and will continue to be, due to such voluntary reduction of rates. And in this connection, Defendants show unto the Court the following:

A.

(1). That what is now Article 6618, Revised (Civil) Statutes of Texas, 1911, is now in force, and has been in force in Texas, continually since 1883, such statute reading as follows:

"The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, how-
212 ever, that, where the fare is paid to the conductor, the rate shall be four cents per mile except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents; and provided, further, that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, further, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile; provided, further, railroads shall be required to keep their ticket offices open half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile."

(2) That by Sub-Division Eleven of Article 6654, R. S. 1911,—which has been continually in force in Texas since 1891,—the Railroad Commission of Texas is empowered to "make and establish reasonable rates for the transportation of passengers over each of the railroads" subject to its jurisdiction,—including each and all of the Plaintiffs,—and with respect to intrastate passenger transportation.

But that, notwithstanding such power and jurisdiction vested in said Commission, it has never exercised such power to reduce such passenger rates.

(3). That by reason of the existence of the aforesaid statutory provisions and the said failure of the Railroad Commission of Texas to exercise the power to reduce such rates, each and all of the railroads of Texas,—including the Plaintiffs and each of them, has had the lawful right and power to charge three cents per mile for intrastate passenger transportation, but of this right they have

not availed themselves to the extent and with the result next he
inafter described.

(4). The statistics in this paragraph given cover the yea
213 ending June 30th, 1909, 1910, 1911, 1912, 1913, 1914 a
1915.

During said years all of the railroads doing an intrastate pa
senger business in Texas carried 117,756,480 "one-line," revenu
intrastate, for an average distance of 40.05 miles per passeng
passenger or for a total of 4,700,055,362 miles at an average ra
of 2.515 cents per mile, and received a total revenue therefrom
$118,271,830; they carried during said period 9,761,606 "inte
line" "revenue" intrastate passengers an average distance of 89.9
miles, or a total of 876,726,335 miles, at an average rate of 2.21
cents per mile, and received a total revenue therefrom of $19,438
357; or, stated in the aggregate, they carried intrastate passenge
a total of 5,576,781,697 miles at an average rate of 2.469 cents p
mile and received revenue therefor amounting to $137,710,187.0

Now, under said laws of the State of Texas, the Plaintiffs ha
the absolute right to charge three cents for each and every of suc
miles of transportation, and if they had done so they would hav
received a revenue of $167,303,450.91, or $29,593,263.91 more tha
they did receive, being an average of $4,227,609.13 per year mo
than they did receive.

During the same period the carriers who are Plaintiffs herein ca
ried intrastate passengers to a proportionate extent and at a simila
rate and with similar results, as shown by Exhibit No. 25, file
herewith.

If all the railroads doing an intrastate passenger business i
Texas had charged said three-cent statutory rate, instead of sai
voluntary rate of 2.469 cents, and, thus had received said averag
additional revenue therefrom of $4,227,609.13, such additiona
revenue would have amounted, annually, to .0067% of the tot
amount of their Capital Stock (par value), Bonds, Equi
214 ment, Trust Obligations, "Current and Other Liabilities
amounting in the aggregate to the sum of $626,795,665.0
and would have amounted to at least .0134% on the total valuatio
of their properties as made by the Railroad Commission to Ju
30, 1915.

(5). In addition to said intrastate passenger transportation, s
the railroads doing business in Texas during said seven year perio
carried 17,955,682 "intrastate revenue passengers" an average di
tance of 118.61 miles, or a total of 2,129,951,157 miles in Tex
at an average rate per mile of 2.0105 cents,—which low rate w
voluntarily, and without compulsion of law, so applied,—and r
ceived therefor a total of $42,800,282.00.

(6). That the total revenues derived by all of the railroads
Texas from intrastate passenger transportation, at said reduce
rates, during said period, was, as aforesaid, the sum of $137,71
187.00; during the same period the total revenues derived, direct
from intrastate freight traffic was the sum of $226,362,278.00, fr

interstate freight traffic the sum of $259,499,638, and from all freight operation was the sum of $495,585,562.

So that, it appears, that the portion of said railroads' intrastate traffic upon which they have so voluntarily reduced rates, with the results stated above, amounts to a little more than 37% of their total intrastate traffic, freight and passenger, calculated upon the basis of the gross revenues derived therefrom, and that upon said 37% of their total intrastate traffic they have voluntarily reduced the rates which they might have charged by 17.7% thereof.

(7). Defendants do not know, and cannot allege, accurately, the cost to the railroads of handling their passenger business as a whole, or with respect alone to the intrastate portion thereof, but *does* allege that the same is more expensive to them per unit of
215 revenue than their contemporaneous freight traffic.

B.

In addition to the voluntary reductions of passenger fares as shown in Paragraph "XXII-A" above, Defendants show unto the Court that throughout their history the railroads of Texas have voluntarily dissipated their revenues and the proper sources thereof by gratuitously giving away every year many millions of dollars revenue, and the opportunity to receive the same, in the form of free passes to favored passengers, the extent of which on the part of all of such railroads, and on the part of each of them, including the Plaintiffs, is shown, in part, by Exhibit No. 25 filed herewith covering the period of years from 1905 to 1914, inclusive. In this connection, however, Defendants show that during said ten year period all of the railroads of Texas have carried intrastate "free passengers" a total of 1,245,498,534 miles, or an average annual mileage of 124,549,853, which mileage, if charged for at the average rate for intrastate passenger transportation of 2.469 cents per mile, for said ten year period would have produced the total sum of $30,550,473.00, or the average yearly sum of $3,055,047.30. Or, if charged for at the statutory three cent rate said mileage for the ten year period would have produced the sum of $37,364,956, or the average yearly sum of $3,736,495. Defendants also show that the amount of free mileage so given away, notwithstanding stringent restrictions thereon imposed by law since 1907, has increased year by year so that the amount of free mileage given away for the year of 1914 was nearly 60% more than it was for the year 1905.

There was and is no provision of law whereby any railway company in Texas is required to give free passes or transportation to anybody.

Said sum of $30,550,473.00 (the value of said free mile-
216 age at 2.469 cents per mile) amounts to 4.8% of the total amount of stocks, bonds, equipment, trust obligations, and current and other obligations of said railroads, or an average yearly percentage thereof of 48%; said sum of $37,364,956.12 (the value of said free mileage at the statutory rate of three cents per mile) amounts to 5.9% of the total amount of said obligations, or an

average yearly percentage thereof of 59%. Said sum of $[illegible] 550,473 amounts to 7.4% of the total valuation of said railroads made by the Railroad Commission of Texas, or an average yearly percentage thereof of 74%; and said sum of $87,264,956 amounts to 9.3% of said valuation, or an average yearly percentage thereof of 93%.

The total free mileage for said ten year period equals 11.21% of the total passenger transportation in Texas, State and Interstate, and the free mileage for the year 1914 equals 11.51% of the total passenger transportation in Texas, State and Interstate.

Defendants say that the mere service of transportation per passenger per mile costs the carrier as much for the free passenger as it does for the pay passenger; that the liabilities of the carriers to free and pay passengers are substantially the same, and the free passengers are liable to personal injury, and receive such injuries, and the carriers are required to pay therefor, to the same extent, in proportion to numbers, as the pay passengers; and that by reason of the Texas Statute which requires special records to be kept by the carriers for free mileage the carriers incur more expense, in book keeping, etc., per passenger, for the free passengers than it does for the pay passengers.

The railroads of Texas also carry annually many hundreds of tons of baggage and freight free for the passengers to whom they issue free passes, and for other favored persons, the extent
217 which Defendants cannot now allege, more specifically, but which will be made to appear upon hearing hereof.

C.

Defendants say that each and all of the Plaintiffs have, during each of the years of its history, dissipated their revenues, not to grow, and have thereby to a substantial extent voluntarily deprived themselves of revenue which they otherwise would have received and retained, and which would have added materially to the actual returns which they have received from their properties and business, and which dissipated revenues must be accounted for herein.

While Defendants cannot now specifically allege the nature and extent of such dissipations, further than is done herein, the same are well known to Plaintiffs and each of them, and Defendants pray that they be required to produce their records showing completely and in detail the disposition of their revenues.

XXIII.

Said order of the Interstate Commerce Commission, in whole or part, was made upon the application and petition, whether such application or petition was so-called or not,—of each and all of the Plaintiffs herein, many of whom have their principal offices within the Western District of Texas, as appears from the Bill of Complaint.

Said order was also made, in whole or part, upon the petition

application, whether such petition or application was so called or not,—of Taylor-Hanna-James Company, a corporation whose principal place of business and principal office is within the Western District of Texas, the Waco Chamber of Commerce, whose principal office and place of business, and the residence of whose members, are within said District, U. S. Pawkett and the Jobbers
218 & Manufacturers' League and the Manufacturers' Club, whose residence and citizenship, and the residence and citizenship of whose members are within said District.

Said order was made in substantial parts thereof, not upon the petition of any party, whereas the matter, or a material portion thereof, complained of by the Railroad Commission of Louisiana as Petitioner in its petition before the Interstate Commerce Commission in the case in which said order was made, arose in and throughout the Western District of Texas by the application throughout said District of rates prescribed by the Railroad Commission of Texas for intrastate rates for similar shipments for similar distances between Shreveport and Texas points.

XXIV.

Wherefore, Defendants say, that by reason of the premises, and especially the matters set forth in paragraph — of Sub-Division — of this Answer, the Interstate Commerce Commission is a proper or necessary party to this proceeding, and Defendants pray that said Commission be made a party Defendant herein, that the orders appropriate to that end be made, that notice hereof be served upon said Commission and upon *that notice hereof be served upon said Commission and upon* the Attorney General of the United States, as provided by law, and that the writ of subpœna of the United States of America issue out and under the seal of this Honorable Court, directed to said Commission and commanding it, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises, and to stand to, perform, and abide by such order, direction, and decree as may be made in the premises.

XXV.

Wherefore, by reason of the premises, Defendants pray
219 that Plaintiffs be denied all relief herein, and that Defendants have judgment for their costs, *all* such other relief to which they may be entitled.

XXVI.

Defendants pray that upon final hearing hereof said order of the Interstate Commerce Commission be annulled and set aside in whole.

And, in the alternative, they pray that said order be given the con-

struction contended for it in this Answer, and that the same be
ited thereto, and the remainder of said order be set aside and
nulled.

XXVII.

Defendants say that, as aforesaid, the Plaintiffs herein are
tending that said order of the Interstate Commerce Commission,
thorizes them to make and file tariffs, rates and classifications,
equal to the maxima rates, etc., prescribed by said order, and t
as shown by the Bill of Complaint Plaintiffs are now engaged
making such tariffs, rates, etc., and propose to file the same with
Interstate Commerce Commission prior to September 30th, 1916,
contend that said tariffs, rates, etc., when so filed, and after Novem
1st, 1916, will become the lawful rates to be charged on intras
traffic to the exclusion of the rates, etc., prescribed therefor by
Railroad Commission of Texas, and Plaintiffs propose, under
supposed authority of said order, on and after November 1st, 19
to apply such rates, etc., so made and filed by them, to Intras
shipments in Texas, to the exclusion of the rates, etc., therefor
scribed by the Railroad Commission of Texas, and thereby imp
upon the shippers of Texas, whom these defendants represent her
and upon Wadel-Connally Hardware Company, Defendant,
joins in this Answer and prayer, and who will have ma
220 intrastate shipments affected thereby, greatly increased
and burdens, and therefore great and irreparable injur
for which Defendants have no adequate remedy at law.

As aforesaid, Defendants say that said order of the Interstate C
merce Commission can be complied with by Plaintiffs, and each
them, without affecting or setting aside or ignoring the intras
rates, etc., prescribed by the Railroad Commission, and because
the premises set forth in this Answer they should be compelled
comply with said order without affecting, setting aside or ignor
such intrastate rates, and their rights, if any they have, to set, af
set aside, or ignore said intrastate rates depends not upon said or
but upon other matters,—many of them matters of fact,—invol
in this cause.

Wherefore, Defendants pray that this Honorable Court enter
order restraining the Plaintiffs, and each of them, from prepar
or filing or thereafter observing any tariff, rate, etc., for intras
shipments in Texas, other than the tariffs, rates, etc., therefor
scribed by the Railroad Commission of Texas; that Plaintiffs,
each of them, thereupon be given notice hereof, and that this ap
cation be set for hearing and upon such hearing that the Court gr
Defendants an injunction, and enter its order, restraining Plain
from filing, or applying to intrastate shipments in Texas any
other than those prescribed therefor by the Railroad Commissi
Texas pending the final disposition of this suit.

XXVIII.

In conjunction with the prayer contained in Sub-Division XXVII hereof, or in the alternative, and by reason of all the premises in this Answer set forth, Defendants pray that the Interstate Commerce Commission and the Attorney General of the United States be given notice hereof as provided by law, that this matter be set for hearing for the purpose, and thereupon that the Court enter its order suspending said order, or restraining the enforcement, operation and execution of the same pending the final disposition of this cause; and because of the irreparable injury and damage which will ensue to Defendants and those represented herein by them,—which will be made to appear more fully upon hearing hereof,—by reason of the premises set forth in this Answer, and unless the relief prayed for herein shall be granted, Defendants pray that notice be given the Interstate Commerce Commission and the Attorney General, as provided by law, and that as soon as practicable thereafter this Court allow a temporary stay or suspension, in whole or in part, of the operation of said order for not more than sixty days from the date of the Court's order and pending the application aforesaid."

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222 *Petition in Intervention of Gulf, Texas & Western Railway Co. et als.*

Plaintiffs introduced and read in evidence the "Petition In Intervention" filed in Equity 295, Oct. 31st, 1916, by the Gulf, Texas & Western Ry. Co. et als., which Petition reads as follows:

"Now comes Gulf, Texas & Western Railway Company, whose principal office is at Jermin, Texas, Southwestern Railway Company, whose principal office is at Henrietta, Texas, Sugar Land Railway Company, whose principal office is at Sugar Land, Texas, San Benito and Rio Grande Valley Railway Company, whose principal office is at San Benito, Texas, Pecos Valley Southern Railway Company, whose principal office is at Pecos, Texas, Roscoe, Snyder & Pacific Railway Company, whose principal office is at Roscoe, Texas, Marshall and East Texas Railway Company, whose principal office is at Marshall, Texas, Weatherford Mineral Wells & Northwestern Railway Company, whose principal office is at Weatherford, Texas, Denison & Pacific Suburban Railway Company, whose principal office is at Denison, Texas, Abilene & Southern Railway Company, whose principal office is at Abilene, Texas, Artesian Belt Railroad Company, whose principal office is at San Antonio, Texas, Bartlett Western Railway Company, whose principal office is at Bartlett, Texas, Moscow, Camden & San Augustine Railway Company, whose principal office is at Camden, Texas, Fort Bolivar Iron Ore Railway Company, whose principal office is at Longview, Texas; Quanah, Acme & Pacific Railway Company, whose principal office is at Quanah, Texas, Rio Grande & Eagle Pass Railway Company, whose principal office is at Laredo, Texas, San Antonio, Fredericksburg & Northern

Railway Company, whose principal office is at Fredericksburg,
Texas, Arkansas & Louisiana Railway Company, whose pr
office is at Grand Saline, Texas, Texas Southwestern Railroa
pany, whose principal office is at Diboll, Texas, Trinity V
Northern Railway Company, whose principal office is at
Texas, Missouri, Oklahoma & Gulf Railway Company of
whose principal office is at Denison, Texas, Caro Northern
Company, whose principal office is at Caro, Texas; Texas Ci
minal Company, whose principal office is at Texa
223 Texas, Paris & Mt. Pleasant Ry. Co., whose principal
at Paris, Texas, Aransas Harbor Terminal Ry. Co.,
principal office is at Aransas Pass, Texas; the Nacog
& Houston Ry. Co., whose principal office is at Nacogdoches,
and Paris and Great Northern Railroad Company, whose pr
office is at Paris, Texas, and with leave of the court file this t
tition in intervention, and respectfully allege:

I.

"That each of the interveners is a corporation duly incor
and organized under the laws of the State of Texas. That t
roads owned and operated by interveners are wholly in the S
Texas.

"That each of the interveners is a common carrier for h
gaged in transportation of freight, classes and commodities b
the City of Shreveport, Louisiana, and points in the State of
or is required by law to so engage, and is such common carr
hire engaged in such transportation between points in the S
Texas.

"That on September 2nd, 1916, the Eastern Texas Railroa
pany and others, plaintiffs in this suit, presented to Hon. I
Pardee, Circuit Judge, their bill of complaint, whereupon an
was made by him directing that said bill be filed and that the
cation for hearing for temporary injunction be granted, whic
ing was by such order set for September 28th, 1916, at Cham
the City of Atlanta, Georgia, but afterwards postponed to No
8th, 1916, at Fort Worth, Texas, and by which order a tem
restraining order was granted restraining the defendants her
others with notice from filing and prosecuting suits against pl
or either of them, for failure or refusal to put into effect Circu
5060 of the Railroad Commission of Texas dated August 28th
and restraining said defendants and others with notice fro
and prosecuting suits against the plaintiffs or either of th
damages or penalties for charging by them on and after No
1st, 1916, the rates prescribed and authorized by the Interstat
merce Commission in its order of July 7th, 1916, (fully descr
the bill of complaint) on shipments moving between points
State of Texas, and by which order it was provided that such
ing order should continue in effect until the hearing

224 termination of the application for an interlocutory or temporary injunction. Said bill of complaint was filed in this court on September 4th, 1916, and the restraining order issued as directed.

"That on the 26th day of September, 1916, the Railroad Commission of Texas made an order, the effect of which was to exempt these interveners from the operation of said circular No. 5060, and said order so exempting these defendants was made retroactive and effective as of Sept. 1st, 1916, a copy of which order of Sept. 26th, 1916, is hereto annexed marked Exhibit No. 1.

"That on the 28th day of October, 1916, an order was signed by Hon. Gordon Russell and filed herein granting leave to these interveners to intervene herein.

II.

"That since the filing of said bill of complaint, Hon. Wm. D. Williams, one of the Railroad Commissioners of Texas died and Hon. Chas. H. Hurdleston has been appointed, qualified and is acting as Railroad Commissioner to fill the vacancy caused by the death of Hon. Wm. D. Williams, and said Charles H. Hurdleston is hereby made a party defendant in this intervention. That D. J. Pickle who is hereby made a party defendant in this intervention is Clerk of the District Court of Travis County, State of Texas, 53rd Judicial District.

III.

"That this is a suit of a civil nature where the amount in controversy as to each of the interveners exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and arises under the Constitution and Laws of the United States, the acts complained of being void as hereinafter more fully pointed out, because in conflict with Sub-division 3, Section 8, Act to regulate commerce pursuant thereto, and an order of the Interstate Commerce Commission made under the authority of said act; and because also in conflict with that part of Section 1 of the 14th Amendment to the Constitution, which prohibits the taking of property without due process of law.

"Without here repeating the same at length, the interveners adopt and make part of this intervention to the same extent as though the same were fully set forth herein paragraphs III to XIII both inclusive of said bill of complaint and the exhibits attached to or filed with said bill.

225 IV.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener Southwestern Railway Company earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission

of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, 2.33%; 1912, 2.75%; 1913, 1.93% (deficit); 1914, 2.83% (deficit) and 1915, 1.64% (deficit).

V.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Marshall and East Texas Railway Company, or its predecessor in title, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, 2.98%; 1911, 2.10%; 1912, 64%; 1913, 1.11%; 1914, 2.36% (deficit) and 1915, 1.56% (deficit).

VI.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Denison & Pacific Suburban Railway Company earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, —%; 1912, —%; 1913, 7.67%; 1914, 3.25% and 1915, 2.99%.

VII.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Paris and Great Northern Railroad Company earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on
226 such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, 25.58%; 1911, 27.72%; 1912, 46.48%; 1913, 26.24%; 1914, 9.96% (deficit) and 1915, 3.66% (deficit).

VIII.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Sugar Land Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, .96%; 1911, 16.02%; 1912, 10.18%; 1913, 10.58%; 1914, 11.89% and 1915, 19.02%.

IX.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener Abilene & Southern Railway Company earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, 5.84%; 1912, 7.05%; 1913, 5.82%; 1914, 4.87% and 1915, 11.60%.

X.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener Artesian Belt Railroad Company earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, —%; 1912, —%; 1913, 3.26% (deficit); 1914, 4.95% (deficit) and 1915, 1.97% (deficit).

XI.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener Bartlett Western Railway Company earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows; 1910, —%; 1911, —%; 1912, 6.55%; 1913, 6.30%; 1914, 7.13% and 1915, 2.44%.

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XII.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Paris & Mount Pleasant Railroad Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, 5.58%; 1912, 7.84%; 1913, 4.05%; 1914, 5.78% and 1915, 3.52%.

XIII.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published an-

nual reports of the Railroad Commission of Texas, the intervener, Quanah, Acme & Pacific Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, 9.41%; 1911, 8.51%; 1912, 7.86%; 1913, 6.49%; 1914, 4.05% and 1915, 7.98%.

XIV.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Moscow, Camden & San Augustine Railway Company earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, —%; 1912, —%; 1913, 9.72%; 1914, 6.11% and 1915, 1.44%.

XV.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the inter-
226 vener, Rio Grande & Eagle Pass Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, 22.31%; 1911, 14.40%; 1912, 15.83%; 1913, 5.58%; 1914, 7.34% and 1915, 5.21%.

XVI.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, San Antonio, Fredericksburg & Northern Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, —%; 1912, —%; 1913, —%; 1914, 2.12% and 1915, 2.08%.

XVII.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Texas, Arkansas & Louisiana Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Rail

road Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, —%; 1912, —%; 1913, 0.60% (deficit); 1914, 7.06%; and 1915, 6.59%.

XVIII.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Texas Short Line Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, 2.11%; 1911, 13.04%; 1912, 7.21%; 1913, 8.97%; 1914, 2.63% and 1915, 2.68%.

XIX.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the pub-
229 lished annual reports of the Railroad Commission of Texas, the intervener, Texas Southeastern Railroad Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, 3.55%; 1911, 3.30%; 1912, 2.95%; 1913, 0.44%; 1914, 0.52% (deficit) and 1915, 4.11%.

XX.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Trinity Valley & Northern Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, —%; 1912, —%; 1913, 2.75%; 1914, 3.19% (deficit) and 1915, 1.76% (deficit).

XXI.

"That in each of the fiscal years ended June 30th during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Missouri, Oklahoma & Gulf Railway Company of Texas, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, 1.07%; 1912, 2.47%; 1913, 2.05% (deficit); 1914, 3.00% and 1915, 4.35% (deficit).

XXII.

"That in each of the fiscal years ended June 30th, during a period of six years ended June 30th, 1915, as shown by the published annual reports of the Railroad Commission of Texas, the intervener, Caro Northern Railway Company, earned on the value of its properties devoted to public use as found and fixed by the Railroad Commission of Texas, a rate of return or percentage on such valuation so fixed by the Railroad Commission of Texas, as follows: 1910, —%; 1911, —%; 1912, —%; 1913, 1.86%; 1914, 1.74% and 1915, 2.64%.

XXIII.

230 "That the value of the properties of each intervener devoted to public use, is not less than such value so found and fixed by the Railroad Commission of Texas. no

"That in establishing such ratio of earnings to said Commission valuation or such rate or percentage of return, as shown by the published annual reports of the Railroad Commission of Texas, no deductions were made from the earnings of the interveners, respectively, for taxes, rentals or hire of equipment, and that if such deductions had been made, the rate of return on the Commission valuation as above stated, from said published annual reports, would have been materially less, or in cases where deficits are above shown, the percentage of such deficits would have been materially greater.

"That the report of the Railroad Commission of Texas for the fiscal year 1916 has not been published, but interveners allege that the addition of the figures for the year 1916 would not materially increase the average rate of return which they have been earning and would not increase the average rate of return on their respective properties in said series of years.

XXIV.

"That during the seven year period ending June 30th, 1916, intervener, Weatherford, Mineral Wells and Northwestern Railway Company, has earned a rate of percentage of return on the original valuation of its properties by the Texas Railroad Commission with the cost of additions and betterments added at the end of each fiscal year as follows: to-wit: 1910, 6.01%; 1911, 6.25%; 1912, 5.01%; 1913, 8.08%; 1914, 5.84%; 1915, 4.96%; and 1916, 2.23%, a detailed statement whereof is hereto attached marked Exhibit No. 2 and made a part hereof.

"That the original valuation of the railroad of this intervener extending from Weatherford to Mineral Wells, a distance of — miles, was made by the Texas Commission on June 27th, 1895, and the original valuation on the extension from Mineral Wells to Crawford, a distance of — miles, was made by said Railroad Commission of Texas in January, 1910.

231 "That in the valuation shown in said Exhibit No. 1, no allowance or addition has been made to represent the increased value of real estate and of many other items entering into the construction of railroads since the date of such original valuations, and that if such additions were made, the percentage of returns shown in said Exhibit No. 1 would be materially less.

XXV.

"That the intervener, the Roscoe, Snyder & Pacific Railway Company, has during each of the fiscal years during a period of seven years ended June 30th, 1916, earned on the original valuation of its railroad properties, as fixed by the Railroad Commission of Texas, with the cost of additions and betterments to the end of each fiscal year added, a rate of return or percentage as follows: 1910, 6.26%; 1911, 4.14%; 1912, .78%; 1913, .74% (deficit); 1914, 3.24%; 1915, 11.44% and 1916, 10.57%; a detailed statement whereof is hereto attached marked Exhibit No. 3 and made a part hereof.

"That the earnings of this intervener during the fiscal years 1915 and 1916 were much larger than usual, which was due to the fact that exceptional good crops of cotton were made in the territory served by the lines of this intervener during such years, and to the fact that good grain crops were made in such territory during the fiscal year 1916;

"That the crops of cotton and grain raised in said territory during the calendar year 1916, and which will be shipped during the fiscal year to end June 30th, 1917, are very much less than they were during the preceding year, and that such falling off of such crops will cause the earnings of this intervener to be very much less during the fiscal year to end June 30th, 1917, than they were during the fiscal years 1915 and 1916.

"That during said series of years, this intervener in an effort to practice rigid economy has not expended as much money as could and should have properly been expended in the maintenance of its railroad, and its principal officers have served without pay, no salaries therefor having been included in its expenses.

XXVI.

"That the intervener, Gulf, Texas & Western Railway Com-
232 pany, during each of the fiscal years during a period of seven years ended June 30th, 1916, after deducting from its operating earnings, taxes, rentals and hire of equipment, has earned no return whatever on the original valuation of its railroad properties as fixed by the Railroad Commission of Texas with the cost of additions and betterments to the end of each fiscal year added, a statement whereof is hereto attached marked Exhibit No. 4 and made a part hereof.

XXVII.

"That the intervener Pecos Valley Southern Railway Company, during each of the fiscal years during a period of six years ended June 30th, 1916, after deducting from its operating earnings, taxes, rentals and hire of equipment, earned on the original valuation of its railroad properties so fixed by the Railroad Commission of Texas, the cost of additions and betterments to the end of each fiscal year added, a rate of return or percentage as follows: 1911, .0244% (deficit); 1912, .00312%; 1913, .0086% (deficit); 1914, .0088% (deficit); 1915, .0035% and 1916, .0045%, a detailed statement whereof is hereto attached marked Exhibit No. 5.

XXVIII.

"That the intervener, San Benito & Rio Grande Valley Railway Company, during each of the fiscal years during a period of four years ended June 30th, 1916, has not earned, after paying its operating expenses, a sufficient amount to pay the taxes on its property devoted to public use, a statement of the operations of said Company being hereto annexed marked Exhibit No. 6.

XXIX.

"That each of the interveners was a party defendant before the Interstate Commerce Commission in case No. 8418 Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway Company, et al., and that the report and order of the Interstate Commerce Commission made therein dated July 7th, 1916, a copy whereof is annexed to the bill of complaint marked Exhibit "A," to which reference is here made, applies to each intervener.

"That these interveners have, in connection with plaintiffs
233 in this cause and other railway companies, prepared and filed with the Interstate Commerce Commission, prior to — 'Texas Lines' Tariff No. 2-B,' which tariff will take effect on November 1st 1916, and which prescribes rates to be charged on shipments between Shreveport and Texas points, which are not greater than the maximum rates prescribed in said order of the Interstate Commerce Commission of July 7th, 1916, as reasonable maximum rates to be charged on shipments between Shreveport and points in Texas, and which tariff prescribes the same rates to be charged for the same distances on shipments moving between points in the State of Texas except that in obedience to so much of said order of the Interstate Commerce Commission as permits the charging of lower rates between Texas points wherein such rates have been depressed by reason of water competition along the Gulf of Mexico or water contiguous thereto, these defendants have provided on page 96 a scale of rates for application between Houston, Galveston, Texas City and Velasco, between Velasco, Galveston and Texas City, and between other points named on said page 96, to which reference in here made, a scale of

class rates lower than the rates published in said Texas Liner' Tariff No. 2-B for application for the same distances between Shreveport and points in Texas, which said lower rates have been caused or influenced by water competition, and there defendants have published on page 88 of said Texas lines' Tariff No. 2-B a provision that rates between Galveston, Port Bolivar, Velasco, Brazoeport, Bryan Mound, Texas and the following points on the one hand, stations between Houston and Galveston on the G. H. & S. A. Ry., stations between Houston and Galveston on the G. H. & H. R. R., stations between Houston and Galveston on the G. C. & S. F. Ry., Anchor, Angleton, Ross and Clute on the Ho. & B. V. Ry., station Hawdon to Anchor, inclusive on the I. & G. N. Ry., and all other points in Texas on the other hand shall not exceed the rates applying between Houston and such other points in Texas under the provisions of Items Nos. 1200 and 1225, or reissues, plus the following differential rates in cents per 100 pounds:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	7	6	5	3	3	3	3	2	2	2

and that on the same page of said Tariff a differential basis of rates is prescribed to and from Texas City, Texas, to and from
234 Port Arthur and Sabine, Texas, to and from Port Aransas, Texas, and that said differential rates as shown on page 88 have been influenced or depressed by water competition. And except that on pages 101 and 102 of said Tariff, differential rates are prescribed to and from the said points described on page 88 thereof on cotton seed and products, carloads, which differential rates have also been influenced or depressed by water competition. That other than is above shown, when said Texas Lines' Tariff No. 2-B was issued, there were not and there are not now any other rates between points in Texas that have been depressed by reason of water competition along the Gulf of Mexico or waters contiguous thereto.

"A copy of said Texas Lines' Tariff No. 2-B is filed herewith marked Exhibit No. 7 and made a part of this intervention as though fully set out herein.

"That said tariff No. 2-B so filed by the Interstate Commerce Commission is in compliance with and authorized by said order of said Interstate Commerce Commission dated July 7th, 1916, and that interveners unless prevented by the pretended order of the District Court of Travis County, State of Texas, hereinafter described, will on and after November 1st, 1916, comply with said order of the Interstate Commerce Commission and act thereunder by charging on all shipments moving between points in the State of Texas, the rates prescribed in said tariff No. 2-B, and so authorized by said order of the Interstate Commerce Commission, and will on and after November 1st, 1916, apply to all such shipments moving between points in the State of Texas the Western classification as required by said order of the Interstate Commerce Commission.

XXX.

"As hereinbefore shown intervenors have not earned a fair retur
on the value of their respective properties owned and devoted to publ
use, and particularly have not been earning a fair return under th
intrastate freight rates prescribed by the Railroad Commission o
Texas on the portions of such values, respectively, which are fairl
attributable to the intrastate freight traffic, and upon which th
freight rates applicable to shipments between points in the State o
Texas should yield a fair return.

235

XXXI.

"Plaintiffs allege that in order to avoid gross discriminations b
tween persons and places in the State of Texas, it is necessary tha
rates no lower than those prescribed by the Interstate Commerce Com
mission in said order of July 7th, 1916, for application betwee
Shreveport and points in the State of Texas, shall be applied to ship
ments between all points in the State of Texas, and that it is not onl
the right but the lawful duty of these plaintiffs, both under Section
of the Federal Act to regulate commerce and under Article 6670 o
the Revised Statutes of the State of Texas, to so apply rates no lowe
than those so fixed by said Commission between all points in the Stat
of Texas and throughout the State of Texas.

"That said Article 6670 of the Revised Statutes of Texas, for each
offense, provides for penalty recoverable by the State of Texas of no
less than $500.00 or more than $5,000.00, and that Article 6671 o
the said Statutes of Texas provides a penalty in favor of each shippe
for violation of said Article 6670, for each act of discrimination, o
not less than $125.00 or more than $500.00.

"Plaintiffs allege that the Interstate Commerce Commission by it
said order of June 17th, 1915, prescribed class rates for application
between Shreveport and points in that part of Texas East of the lin
beginning at the point where the Gulf, Colorado and Santa Fe Rail
way Company crosses Red River, a short distance from Gainesville
Texas; thence following the railroad of said Company to Fort Worth
Texas; thence following the railroad of the Missouri, Kansas and
Texas Railway Company of Texas to Waco, Texas, and thence down
the Brazos River to the Gulf of Mexico, and prescribed that rates i
said section of Texas East of such line for the same distance should
not be less than said rates prescribed for application between Shreve
port and points in the State of Texas East of said line.

"That if said order of June 17th, 1915, had taken effect, and the
rates prescribed by the Railroad Commission of Texas had remained
in effect in the balance of the State of Texas, the result would have
been that the rate on first class from Galveston, Texas, to Fort Worth,
Texas, a distance of 307 miles, would have been 98 cents,
236 while the rate on first class from Galveston, Texas, to Amarillo,
Texas, a distance of 642 miles, would have been 87 cents, and
the rate from Houston, Texas, to Fort Worth, Texas, on first class

would have been 37 cents, and the rate from Houston, Texas, to Weatherford, Texas, about thirty miles West of Fort Worth, and further from Houston would have been 80 cents.

"On the hearing hereof numerous instances (which could be multiplied almost indefinitely) of the discriminations which would result from attempting to apply the rates prescribed by the Interstate Commerce Commission in its order of July 7th, 1916, to a part of the State of Texas instead of applying the same to the entire State, will be shown.

XXXII.

"Plaintiffs allege that the rates prescribed by the Interstate Commerce Commission in said order of July 7th, 1916, for application between Shreveport and points in the State of Texas have, by the necessary effect of said order, been found by said Commission to be reasonable and just maximum rates to be charged for like distances between all points in the State of Texas.

"As hereinbefore shown under existing rates prescribed by the Railroad Commission of Texas, plaintiffs are and have been for a number of years earning far less than a reasonable return on the value of their respective properties devoted to public use, particularly on the portion of the value thereof fairly and justly assignable to the intrastate freight traffic, and upon which the revenue from the intrastate freight traffic should yield a fair return, wherefore, in order to earn a fair return on the value of their respective properties, they are entitled to charge between all points in the State of Texas the said rates so prescribed by the Interstate Commerce Commission.

"That if the Constitution or statutes of the State of Texas, or any authority that can be exercised or attempted to be exercised under such Constitution or statutes, or in any way under the State of Texas, be so construed, if enforced, as to deprive these plaintiffs, or either of any of them, from charging on and after November 1st, 1916, such rates on all shipments between points in the State of Texas,
237 then that such Constitution or statutes, or any other such action under the State of Texas would deprive these plaintiffs and each of them of their property in whole or in pro tanto without due process of law contrary to the 14th amendment to the Constitution of the United States.

XXXIII.

"That these interveners have a joint and common interest with each other and with plaintiffs in the subject matter and cause of action involved in this suit and in the relief herein sought, and would be affected in like manner, though in different amounts, by the enforcement of the rates, rules and regulations of the Railroad Commission of Texas, of which complaint is herein made, and there is a common question between interveners and each of them and the defendants herein. For further specification hereunder, interveners show that said rates prescribed by the Interstate Commerce Commis-

sion, as well as the rates prescribed by the Railroad Commission of Texas, apply to movements originating on the Railroad of one of interveners or of plaintiffs, and terminating on the railroad of another, and in some cases passing over the intermediate railroad of one of the interveners or plaintiffs, and with respect to all such joint rates so applying, interveners and plaintiffs are jointly interested in knowing and being protected in the lawful and correct rate which should be charged.

XXXIV.

"That the rates prescribed in said tariff No. 2-B to be charged on shipments between points in the State of Texas are on an average materially higher than the corresponding rates prescribed by the Railroad Commission of Texas for application to such shipments, and that if interveners are permitted on and after November 1st, 1916, to charge the rates named in said tariff No. 2-B for application between points in the State of Texas, their earnings will be increased in at least the sum of Two Hundred Thousand Dollars ($200,000.00) per annum over and above the amount that they would or could earn on and after November 1st, 1916, if they are compelled to apply the rates on such shipments prescribed by the Railroad Commission of Texas and now in effect, and that a substantial part of such increased earnings would accrue to each of the interveners except the Texas City Terminal Company, which
238 Company is paid by its connecting lines for handling freight a fixed amount per car, the Denison & Pacific Suburban Railway Company which receives a fixed rate from its connection, and the Port Bolivar Iron Ore Railway Company, *where* line is operated by the Gulf, Colorado and Santa Fe Railway Company.

XXXV.

"Interveners allege that on the 14th day of October, 1916, the State of Texas, purporting to act through her Attorney General supposedly filed a suit in the District Court of Travis County, 53rd Judicial District, State of Texas, against these interveners and other railway companies, defendants therein, wherein the State of Texas sought to enjoin the defendants in said supposed suit from charging on and after November 1st, 1916, higher rates than those prescribed by the Railroad Commission of Texas, and from using any classification other than that prescribed by the Railroad Commission of Texas, a copy of the original petition in which said supposed suit is hereto annexed marked Exhibit No. 8 and referred to.

"That these interveners on the 19th day of October, 1916, filed in said District Court their answer, in which was included in due order, pleas to the jurisdiction of said District Court over the subject matter of said suit, it being shown in such pleas that the Interstate Commerce Commission had made its order dated July 17th, 1916, herein described, and the history of the case before the Interstate Commerce Commission which resulted in the making of said order being therein described, and wherein it was shown that interveners, defend-

ants in said suit in said State District Court, were parties to and affected by said order of the Interstate Commerce Commission of July 7th, 1916, and that they, in connection with other railway companies, in compliance with and acting under the authority of said order of the Interstate Commerce Commission had, before the 30th day of September, 1916, filed with the Interstate Commerce Commission said Texas Lines' Tariff No. 2-B herein described, and wherein the filing of the bill of complaint in this cause, the granting of the restraining orders thereon, and the filing of the answer of the Railroad Commission of Texas and of the Attorney General of Texas in this
239 cause were shown, a copy of said bill of complaint and of said answer being annexed as exhibits to said pleas of these interveners in said State Court, and in which such pleas it was fully shown that the said State Court was without jurisdiction to suspend in whole or in part the said order of the Interstate Commerce Commission, that this Honorable Court had acquired jurisdiction of the subject matter of the litigation, and that on the doctrine of comity, no action should be taken by the State Court, a copy of which answer of these defendants in said case in the State Court is hereto annexed marked Exhibit No. 9 and made a part hereof.

"That on the hearing of the application for a temporary injunction in said State Court, all of the facts alleged in said pleas to the jurisdiction were established by competent proof and were uncontradicted, there being no question or issue of fact made with respect to any of the allegations in said pleas to the jurisdiction.

"That after such hearing, said State Court on the 23rd day of October, 1916, entered a purported order undertaking to restrain these interveners from charging on and after November 1st, 1916, higher rates than the rates prescribed by the Railroad Commission of Texas, and from using or applying to shipments between points in the State of Texas any classification other than the classification prescribed by the Railroad Commission of Texas, and known as the Texas classification, and also purporting to grant a writ of mandamus requiring and compelling these interveners on and after November 1st, 1916, to charge on shipments between points in the State of Texas the rates prescribed by the Railroad Commission of Texas and to obey the rules, regulations and classifications of said Commission. A copy of said purported order of said State Court is hereto annexed marked Exhibit No. 10 and referred to.

"Interveners show that said purported order undertakes to suspend and restrain the operation of (with respect to these interveners) said order of the Interstate Commerce Commission of July 7th, 1916, in the following particulars:

"(a) It prohibits these interveners from using on and after November 1st, 1916, on shipments between points in the State of Texas, the current Western classification and requires them to use the said Texas classification, while the order of the Interstate Commerce Commission specifically requires these defendants on and after
240 November 1st, 1916, to use on such shipments the current Western classification and prohibits them from using the Texas classification.

(*b*) The effect of said order of the Interstate Commerce Commission of July 7th, 1916, applied to said Texas Lines' Tariff No. 2-B, is to require these interveners on and after November 1st, 1916, to charge on shipments between points in the State of Texas the rates named in said tariff No. 2-B, which are in many particulars higher than the rates prescribed by the Railroad Commission of Texas, for application to the same shipments, while said purported order of the State Court requires these interveners on and after November 1st, 1916, to charge on shipments between points in the State of Texas such lower rates fixed by the Railroad Commission of the State of Texas.

(*c*) Said order of the Interstate Commerce Commission of July 7th, 1916, permits these interveners and their connections on shipments between Shreveport and points in Texas on and after November 1st, 1916, to charge the rates specified in said order of July 7th, 1916, as reasonable maximum rates, and in order to remove the discriminations against Shreveport, as required by such order, it permits these interveners to charge on shipments for like distances between points in the State of Texas such maximum rates, while the effect of said purported order of said State Court, if it be enforced, would be to require these interveners and their connecting lines, in order to remove the discriminations against Shreveport, as required by said order of the Interstate Commerce Commission, to charge on shipments moving between Shreveport and points in the State of Texas, the lesser rates prescribed by the Railroad Commission of Texas, for movements for like distances between points in the State of Texas, and thereby to substitute State rates fixed by the Railroad Commission of Texas, for the Interstate rates fixed and found to be just and reasonable by said order of the Interstate Commerce Commission.

"Generally, the effect of said order of said State Court is to prohibit interveners from obeying and acting under said order of the Interstate Commerce Commission.

241 "Herein interveners show that none of the railroads owned by them extended to Shreveport, Louisiana, and that without the co-operation of the plaintiffs, or some of the plaintiffs in this cause, it is not within the power of interveners, or any of them, without paying out of their respective treasuries for a part of the service rendered by their connections, or one or more of their connections, plaintiffs in this cause, to apply to shipments moving between Shreveport and points in the State of Texas, the rates prescribed by the Railroad Commission of Texas for like distances between points in the State of Texas. So that these interveners could not, if they so desired, remove the said discrimination against Shreveport by applying to and from Shreveport the rates prescribed by the Railroad Commission of Texas.

"Because of the facts herein alleged, Interveners aver that said order of said State Court was made without jurisdiction over the subject matter and is void.

XXXVI.

"That interveners have no adequate remedy at law for the wrongs and injuries of which they herein complain, and they will suffer irreparable injury, unless the defendants are restrained and enjoined as herein prayed for.

"In consideration whereof, and for so much as interveners are without remedy in the premises by the strict rules of the common law and can only have relief in a court of equity where matters of this kind are properly cognizable and relievable, interveners pray:

"First. That your Honors grant a temporary injunction to restrain the defendants, and each of them, and all other officers, individuals, persons, and corporations, and his, their, or its attorneys, agents, or employes, from claiming or instituting, or causing to be instituted suit or suits, civil, criminal, against interveners, or either or any of them, or their or its officers or agents, for the recovery of any damages, over charges, penalty, fines, or penalties thereunder, by virtue of Chapter 15, Title 115 of the Revised Civil Statutes of the State of Texas or any other statutes thereof, for failure of interveners, or either of them, to charge the rates or comply with the rules, orders and classifications of the Rail-
212 road Commission of Texas herein described and complained of, or any or either of them combined, when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said order of July 7th, 1916, or with said Texas Lines' Tariff No. 2-B, or for the charging by interveners, or any, or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916, or in said Texas Lines' Tariff No. 2-B, and further to restrain the said Railroad Commission of Texas and said Allison Mayfield, Chas. H. Hurdleston, and Karle E. Mayfield, and their successors in office, from furnishing to any person or persons, copies, certified or otherwise, of any of said tariffs of rates, circulars, schedules, rules, orders and classifications, or of the orders establishing the same, of the Railroad Commission of Texas, against which relief is herein prayed for, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that interveners, or either or any of them, their or its agents and officers have not observed, and do not observe and obey said tariffs of rates, circulars, schedules, rules, orders and classifications of the Railroad Commission of Texas herein complained of, where the same are in conflict with the rates and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916, or in said Texas Lines' Tariff No. 2-B and from requesting or authorizing the Attorney General or any other officer of the State of Texas to institute any proceedings against interveners, or either or any of them, their

or its officers and agents, for failure to obey or for disregarding said tariffs of rates, circulars, schedules, rules, orders and classifications of said Railroad Commission of Texas herein complained of.

"Second. That your Honors grant a temporary injunction restraining Hon. B. F. Looney, the Attorney General of Texas, and his assistants and each of them, D. J. Pickle, Clerk, his deputies and each of them, the Railroad Commission of Texas, the other defendants in this cause and each of them, their officers, agents and attorneys, and all other persons, from attempting in any
243 way to enforce said order of said State Court made October 23rd, 1916, from suing out or issuing attachments, or any other process of arrests for or against the officers, agents or employees of interveners, or any of them, for failure to obey said order, from reporting to or advising in any way the Judge of said District Court that interveners, their officers and agents, or any of them, have failed and refused to obey said order, and from causing others to in any way inform or advise said Judge that these interveners, their officers or agents, have failed or refused to obey said order.

"Third. That upon final hearing the said injunctions be perpetuated.

"Fourth. That upon final hearing herein all of the rates, orders and classifications of the Railroad Commission of Texas be declared unreasonable and unjust and confiscatory pro tanto of the properties of interveners, and as pro tanto depriving interveners of their respective properties without due process of law, and that an injunction issue restraining the Railroad Commission of Texas, the Attorney General and all individuals, persons, corporations from instituting suits of any nature or otherwise attempting to enforce against these interveners, the said rates, orders and classifications of the Railroad Commission of Texas, or any part thereof, and from instituting suits or prosecutions of any nature against these interveners, or any of them, for failure to charge any of the rates prescribed — orders of classifications.

"Fifth. That interveners have such other and further relief as may be just and equitable."

244 *Petition of Intervention of the Railroad Commission of Louisiana.*

Plaintiffs introduced and read in evidence the "Petition of Intervention of the Railroad Commission of Louisiana," which Petition reads as follows:

The Railroad Commission of Louisiana with respect shows:

I.

That *though* J. J. Meredith, Chairman, Shelby Taylor and Henry B. Schreiber, in March, 1911, it filed with the Interstate Commerce Commission a complaint against numerous lines of railway running between Shreveport, Louisiana, and points in the State of Texas,

alleging discriminations against the City of Shreveport in the rates, rules and regulations in effect over such lines of railroad, the said compiaint being I. C. C. Docket No. 3819, in which case the Interstate Commerce Commission made an order on March 11, 1912, declaring certain rates, regulations and practices complained of discriminatory and void, and directing the defendant railroads in such proceedings to remove such discriminations and practices, the said order being directed against the Texas & Pacific Railway Company and the Houston East & West Texas Railway Company. That the said order of the Interstate Commerce Commission of March 11, 1912, was contested by the defendant carriers in the said proceeding, and the authority of the Interstate Commerce Commission to remove discriminations caused by the relationship between interstate and intrastate rates, against interstate shippers, was fully sustained by the United States Commerce Court, and, finally, by the Supreme Court of the United States.

II.

That subsequently the Railroad Commission of Louisiana filed supplemental petitions in the said cause, naming as defendants a number of railroads not included in the original proceeding before the Commission, and asking that the order of the Commission be broadened so as to include all of the carriers not named in the original order, and certain territory not embraced therein.

III.

That subsequently, the Railroad Commission of Louisiana filed an additional complaint before the Interstate Commerce Commission, asking that the terms of the orders theretofore made by the said Commission be extended to certain railroad companies operating in Eastern Texas not included in the original and supplementary proceedings theretofore filed, and then filed a third complaint in which it was sought to have the orders of the Interstate Commerce Commission removing discriminations in interstate rates be-
245 tween Shreveport, Louisiana, and points in the State of Texas, extended so as to apply to all of the railroads in Texas.

After a full hearing, the Interstate Commerce Commission, on the 7th day of July 1916, rendered its decision and report and ordered the Texas railroads, defendants in the consolidated complaints of the Railroad Commission of Louisiana, to discontinue unjust discrimination against shippers and receivers of freight doing business in the City of Shreveport.

IV.

That in September, 1916, the Railroad Commission of Louisiana learned of the action of the Railroad Commission of Texas cancelling rates in effect on the date of the decision of the Interstate Commerce Commission in its docket No. 8418, and dockets 3918, 3918, sup-

plemental, 8290 and I. & S. dockets 710 and 720 consolidated with I. C. C. docket 8418, entitled, "Shelby Taylor, Chairman, B. A. Bridges and John T. Michel, members — and constituting the Railroad Commission of Louisiana, petitioners, vs. Aransas Harbor Terminal Railway Company, et al., respondents," and restoring rates previously in effect in the State of Texas, which had been advanced by the Railroad Commission of Texas approximately ten per cent. The decision of the Interstate Commerce Commission of July 7, 1916, 41 I. C. C. 83, page 95, states:

"In response to a suggestion by the Commission at the argument and with the consent of counsel for all parties, the carriers filed a list of commodities upon which they are willing to apply for the transportation between Shreveport and Texas stations, rates equivalent to the current Texas rates or those recently approved by the Texas Commission. The list includes wool, cement, fertilizers, scrap iron (not junk) lime, *salt*, sugar and molasses, logs and fence posts (standard scale), packing house products and fresh meats, canned goods, cartridges, hides in carloads and less than carloads, oil (crude and fuel, including distillates and creosote), iron rails and fastenings, and railway supplies and material. Complainants have expressed satisfaction with the proposed adjustment of rates on these commodities, and we shall make no finding with respect to their reasonableness."

246 The cancellation of the rates upon the commodities referred to in the paragraph quoted hereinabove from the decision of the Interstate Commerce Commission of July 7, 1916, would leave in effect in the State of Texas rates which will continue and perpetuate the discriminations complained of by the Railroad Commission in its original petition filed with the Interstate Commerce Commission and the relief which the shippers and receivers of freight at Shreveport and other points in the State of Louisiana are entitled to under the decisions of the Interstate Commerce Commission, the Commerce Court and the Supreme Court of the United States, will be denied such shippers and receivers of freight originating at or destined to points in the State of Texas from and to points in the State of Louisiana.

V.

That the carriers defendants in the said consolidated complaints of the Railroad Commission of Louisiana were and are prepared to comply with the orders of the Interstate Commerce Commission and publish rates which would remove the unjust discrimination complained of by the Railroad Commission of Louisiana, when after having granted certain advances in the intrastate rates in the State of Texas, the Railroad Commission of Texas suspended its orders granting the said advances and restored rates, rules, regulations and conditions which, if continued in effect, will cause a continuance of the discriminations against shippers and receivers of freight doing business in Shreveport, on shipments between Shreveport and Texas points which were complained of by the Railroad Commission of

Louisiana in its various complaints to the Interstate Commerce Commission, and which were ordered removed by the orders of the Interstate Commerce Commission.

VI.

As further cause for its intervention in this case, the Railroad Commission of Louisiana denies the intimation contained in Paragraph VII, Article XVII, of the Answer of the Railroad Commission and the Attorney General of Texas, that the proceedings before the Interstate Commerce Commission in which the Railroad Commission of Louisiana was complainant and the Texas Railroads were defendants, I. C. C. Dockets, 3819, 3418, 3918, 3918 supplemental 3290 and I. & S. Dockets 710 and 729, consolidated, were collusive, or that such complaint was brought at the instance or suggestion of, or in the interests of any of the defendants in such proceedings which
247 are complainants in this proceedings; or in the interest, or at the suggestion of any other carriers whatsoever. Intervenor specially denies that the proceedings before the Interstate Commerce Commission and the orders entered by the Interstate Commerce Commission in the complaints above numbered, were brought and issued for any purpose except to eliminate the discrimination in rates for transportation of freight between Shreveport, Louisiana, and points of origin and destination in the State of Texas, and to seek reasonable rates for such transportation. Intervenor specially denies that the orders of the Interstate Commerce Commission were unsupported by substantial evidence, or that they are in any manner unreasonable or beyond the power delegated to the Interstate Commerce Commission by Congress, or beyond the power of Congress to so delegate under the Commerce clause of the Constitution of the United States.

VII.

Intervenor, the Railroad Commission of Louisiana, further says that the defendants in this cause in Paragraph XXVI of their answer, "pray that upon final hearing hereof, said order of the Interstate Commerce Commission be annulled and set aside in whole or in part," and in Paragraph XXVIII, defendants in their answer "pray that the Interstate Commerce Commission and the Attorney General of the United States be given notice hereof as provided by law, that this matter be set for hearing for the purpose and thereupon that the Court enter its order suspending said order, or restraining the enforcement, operation and execution of the same pending the final disposition of this cause; and because of the irreparable injury and damage which will ensue to defendants and those represented herein by them, which will be made to appear more fully upon hearing hereof,—by reason of the premises set forth in this answer, and until the relief prayed for herein shall be granted, defendants pray that notice be given the Interstate Commerce Commission and the Attorney General as provided by law and that as soon as practicable thereafter this Court allow a temporary stay or suspension, in whole

or in part, of the operation of said order for not more than sixty days from the date of the Court's order and pending the application aforesaid," the order referred to being the order of the Interstate Commerce Commission of July 7, 1916.

248 Now Intervenor denies that the defendants are entitled to the relief sough- against the Interstate Commerce Commission in their answer in this proceeding for the following reasons:

1. The answer of the defendants seeks to annul and set aside in whole, or to suspend and restrain, in whole or in part, the operation of the said order of the Interstate Commerce Commission of July 7, 1916.

2. That the said order was made and entered by the Interstate Commerce Commission upon a complaint regularly filed by the Railroad Commission of Louisiana against the railroads operating in the State of Texas and carrying freight to and from Shreveport, Louisiana, and Texas points of origin and destination.

3. That the said complaint was legally and properly investigated by the Interstate Commerce Commission and the said order was adopted and issued by the Interstate Commerce Commission upon substantial evidence.

4. That the domicile of the Railroad Commission of Louisiana is in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, and is located in the Eastern District of Louisiana, Baton Rouge Division. That the District Court Jurisdiction Act provides that:

"The venue of any suit whenever brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be brought in the judicial district wherein is the residence of the party, or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party, the venue shall be in the district wherein the matter in the petition before the Commission arises, and except where the order does not relate either to transportation or to a matter so complained or before the Commission, the matter complained of by the order shall be deemed arising in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed to mean the final destination of such shipment."

249 That, therefore, the said order of the Interstate Commerce Commission is not subject to direct or indirect attack upon any grounds stated by the defendants herein, except by direct proceeding against the United States in the Eastern District of Louisiana, Baton Rouge Division, the domicile of the Railroad Commission of Louisiana, upon whose complaint and petition and its complaint and petition only, the said order was made.

5. That therefor-, for the reasons stated, and for the further reason that none of the members of the Railroad Commission of Louisiana have ever at any time resided within the judicial district known as the Western District of Texas, but each and all of the members o

the Railroad Commission of Louisiana have at all times resided in the Eastern District or the Western District of Louisiana, this Court is without jurisdiction or power to grant the relief prayed for in defendants' answer.

VIII.

Intervenor, as further cause for its intervention, says that neither the Railroad Commission of Texas nor its constituent members, nor the Attorney General of Texas have any interest in the order of the Interstate Commerce Commission, which in their answer they seek to have in the proceeding annulled and set aside in whole or in part, which will permit or entitle them or either of them to bring any proceeding to annul and set aside, restrain or suspend in whole or in part, the said order of the Interstate Commerce Commission.

IX.

And, for the reasons stated, this Court is without jurisdiction to grant the prayers of the said answer of the Railroad Commission of Texas and the Attorney General of Texas that the order of the Interstate Commerce Commission be annulled and set aside, in whole or in part, or that such order be temporarily suspended or restrained pending final disposition of this cause in any manner or for any period whatever.

X.

That the Railroad Commission of Louisiana is vitally interested in having the orders of the Interstate Commerce Commission sustained, the discriminations thereby eliminated and abolished perpetually prohibited, and reasonable non-discriminatory rates between Shreveport, and other points in the State of Louisiana, and points in the State of Texas, for the transportation of commerce between such points, continuously maintained.

250

XI.

Wherefore, the Railroad Commission of Louisiana, and Shelby Taylor, Chairman, John T. Michel and B. A. Bridges, its members, leave being granted to intervene in this cause, pray that the defendants herein take nothing by the prayers in their answer asking that upon final hearing hereof said order of the Interstate Commerce Commission be annulled and set aside, in whole or in part, and asking that this court *center* its order suspending the said order of the Interstate Commerce Commission, or restraining the enforcement, operation and execution of the same pending final disposition of this cause, and that the prayers of the defendants contained in their said answer in so far as they may seek to annul or to suspend or set aside in whole or in part, the said order of the Interstate Commerce Commission, be denied and the case be dismissed.

Intervenor prays for such other and further general and special relief as may protect *their* just and equitable rights.

251 *Plaintiffs' (First) Supplemental Bill of Complaint.*

Plaintiffs introduced and read in evidence their (First) "Supplemental Bill of Complaint," filed in Equity 295, which reads as follows:

"Now come the plaintiffs, and under leave of the Court file this their supplemental bill of complaint and respectfully aver:

I.

Since the filing of the original bill, on September 4th, 1916, William D. Williams, a member of the Railroad Commission of Texas, and a defendant, died, and has been succeeded by C. H. Hurdlestone, who resides in the City of Austin, Travis County, in the Western District of Texas, who has duly qualified and is acting as such Railroad Commissioner, and is now made a party; that Duval West, one of the plaintiffs, as a Receiver of the San Antonio, Uvalde & Gulf Railroad Company, has ceased to act as such Receiver, and A. R. Ponder, one of the plaintiffs herein, is now sole Receiver of the San Antonio, Uvalde & Gulf Railroad Company. With these exceptions the Plaintiffs and Defendants are the same as in the original bill.

II.

That the allegations contained in the original bill and replication are now reaffirmed and made a part of this supplemental bill.

III.

In pursuance of, in obedience to, and acting under authority of the order of the Interstate Commerce Commission of July 7th, 1916, described in the original bill of complaint and annexed thereto as Exhibit A, plaintiffs, acting with other Railway Companies described in said order, prepared and caused to be filed with the Inter-
252 state Commerce Commission on or about October 28th, 1916, a certain tariff styled Texas Lines' Tariff No. 2-B, issued by A. C. Fonda, Agent, I. C. C. No. 38, a copy whereof is filed herewith marked Exhibit F, and so acting, plaintiffs, on November 7th, 1916, filed with the Interstate Commerce Commission Supplement No. 4 to said Tariff No. 2-B, and plaintiffs, so acting, on December 4th, 1916, filed with the Interstate Commerce Commission Supplement No. 8 to the said Tariff No. 2-B, and plaintiffs, so acting, on January 1st, 1917, filed with the Interstate Commerce Commission Supplement No. 9 to the said Tariff No. 2-B, and plaintiffs, so acting, on February 10th, 1917, filed with the Interstate Commerce Commission Supplement No. 10 to the said Tariff No. 2-B, and on February 20th, 1917, plaintiffs, so acting, filed with the Interstate Commerce Commission Supplement No. 12 to said Tariff No. 2-B, copies of which Supple-

ments are filed herewith marked respectively Exhibits G, H, I, J and K.

That in obedience to so much of said order of the Interstate Commerce Commission of July 7th, 1916, as permits the charging of lower rates between Texas points, where such rates have been depressed by reason of water competition along the Gulf of Mexico and waters contiguous thereto, plaintiffs have provided on page 96 of said Tariff 2-B, a scale of rates for application between Houston, Galveston, Texas City and Velasco, between Velasco, Galveston and Texas City, and between other points named on said page 96, to which reference is here made, a scale of class rates lower than the rates published in said Texas Lines' Tariff No. 2-B, for application for the same distances between Shreveport and points in Texas, which said lower rates have been caused or influenced by water competition, and these defendants have published on page 88 of said Texas Lines' Tariff No. 2-B a provision that rates between Galveston, Port Bolivar, Velasco, Brazosport, Bryan Mound, Texas, and the following points on the one hand, stations between Houston and Galveston on the G. H. & S. A. Ry., stations between Houston and Galveston on the G. H. & H. R. R., stations between Houston and Galveston on the G. C. & S. F. Ry., Anchor, Angleton, Ross and Clute on the Ho. & B. V.
253 Ry., stations Hawdon to Anchor, inclusive, on the I. & G. N. Ry., and all other points in Texas on the other hand shall not exceed the rates applying between Houston and such other points in Texas under the provisions of Items Nos. 1200 and 1225, or reissues, plus the following differential rates in cents per 100 pounds:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	7	6	5	3	3	3	3	2	2	2

and that on the same page of said Tariff a differential basis of rates is prescribed to and from Texas City, Texas, to and from Port Arthur and Sabine, Texas, to and from Port Aransas, Texas, and that said differential rates as shown on page 88 have been influenced or depressed by water competition. That on pages 101 and 102 of said Tariff, differential rates are prescribed to and from the said points described on page 88 thereof on cottonseed and products, carloads, which differential rates have also been influenced or depressed by water competition.

That the rates prescribed or named in said Tariff No. 2-B, and the Supplements thereto, are in no case or cases higher than the rates found and adjudged by the Interstate Commerce Commission in said order of July 7th, 1916, to be reasonable and just maxima rates.

That said Tariff No. 2-B, and the Supplements thereto, so filed with the Interstate Commerce Commission, were and are in all respects in compliance with and authorized by said order of the Interstate Commerce Commission, dated July 7th, 1916.

Plaintiffs and each of them propose to continue to charge the rates named in said Tariff No. 2-B, and the Supplements thereto, on shipments between Shreveport and points in Texas, and on shipments between points in Texas.

That the defendant, B. F. Looney, purporting to appear for the State of Texas, and as Attorney General of the State of Texas, and others petitioned the Interstate Commerce Commission for a re-hearing, and to set aside its order of July 7th, 1916, and to suspend said Tariff No. 2-B, alleging, among other things, that said Tariff No. 2-B was not in conformity with or authorized by the said order of July 7th, 1916, which petitions were heard under the direc-
254 tion of the Interstate Commerce Commission by and before its suspension Board on or about the 19th and 20th days of October, 1916, and thereafter such petitions for re-hearing and suspension were considered by the Interstate Commerce Commission in executive session; that thereafter, on the 31st day of October, A. D. 1916, the Interstate Commerce Commission made an order, a copy of which is hereto annexed marked Exhibit L, the effect of which order was to suspend the rates on cattle, lignite, cord-wood and tan bark named in said Tariff No. 2-B until the first day of March, 1917, unless otherwise ordered by the Commission, and to authorize, sanction and permit the balance of said Tariff No. 2-B, as in conformity with and authorized by the said order of July 7th, 1916, to take effect on November 1st, 1916, and on and since said date plaintiffs have charged on shipments moving between Shreveport and Texas and between points in Texas, the rates named in said Tariff No. 2-B, and the Supplements thereto, except those items so suspended by the order of the Interstate Commerce Commission. That a number of the rates named by the Railroad Commission of Texas, and not embraced in the order of the Interstate Commerce Commission of July 7th, 1916, are for convenience published in said Tariff No. 2-B. That also on the 31st day of October, A. D. 1916, the Interstate Commerce Commission made an order, a copy of which is hereto annexed marked Exhibit M, setting down for oral argument for December 6th, 1916, the petitions of said B. F. Looney and others for a re-hearing and re-opening of the matters dealt with in said order of the Interstate Commerce Commission of July 7th, 1916, and for a suspension of said Tariff No. 2-B, which oral argument occurred before the Interstate Commerce Commission, at its office in Washington, D. C., on the 6th and 7th days of December, 1916. That thereafter on the 26th day of January, 1917, the Interstate Commerce Commission made an order, a copy of which is hereto annexed marked Exhibit N, granting a re-hearing, but pro-
viding that pending such re-hearing and decision thereon
255 the said order of July 7th, 1916, should remain in full force and effect. That on or before the 6th day of December, 1916, the Railroad Commission of Texas became a party by voluntary intervention in said cause No. 8418, Railroad Commission of Louisiana vs. Aransas Harbor Terminal Railway Company et al., before the Interstate Commerce Commission, and since then has been a party thereto. That on the 16th day of February, 1917, the Interstate Commerce Commission made an order further suspending the said rates on cattle, cord-wood, lignite and tan bark, until the first day of September, 1917, unless otherwise ordered by the Commission, a copy of which is hereto annexed marked Exhibit O.

That the Interstate Commerce Commission ordered a hearing before one of its examiners, beginning at Dallas, Texas, March 12th, 1917, to take and receive evidence on the re-hearing of the said case of Railroad Commission of Louisiana vs. Aransas Harbor Terminal Railway Company et al., in which said order of July 7th, 1916, was entered. That upon application to the Interstate Commerce Commission by the defendant, B. F. Looney, and his associates, the date of said hearing at Dallas was postponed by the Interstate Commerce Commission until March 26th, 1917, and again, on the application of the defendant, B. F. Looney, and his associates, the date of said hearing at Dallas was postponed by the Interstate Commerce Commission from March 26th, 1917, to April 16th, 1917.

IV.

That on or about the 25th day of January, 1917, the defendant, B. F. Looney, prepared or caused to be prepared and to be introduced in the Senate of the Legislature of the State of Texas, by Senators Hudspeth, Lattimore and Bailey, a certain bill numbered Senate Bill 219, a copy of which is hereto annexed marked Exhibit P. Said bill was referred to the Judiciary Committee of the Senate of Texas, which Committee, after having had an elaborate hearing thereon, reported said bill to the State Senate with a recommendation that it do pass; that thereafter on several different dates, said bill was considered by the Senate of Texas, but the Legislature of Texas adjourned on the 21st day of March, 1917, without
256 having pass- said bill. That the defendant, B. F. Looney, has asserted and claimed and still asserts and claims that even without an act of the Legislature, as proposed in said Senate Bill 219, he has had and now has the power and authority to file suits against the plaintiffs, and each of them for forfeiture of, and obtain forfeitures of their charters, and the appointment of Receivers of the properties of plaintiffs, and each of them, with or without notice, to take away from them and each of them, and to take charge of, control and operate their respective railroads and properties, all of which defendant, B. F. Looney, as Attorney General, has threatened to do; that the purpose of said defendant, Looney, in filing such forfeiture suits, obtaining the appointment of Receivers, etc., among others would be to destroy the rights of plaintiffs in this case, and deprive them of their right to act under the said orders of the Interstate Commerce Commission, and under the Constitution and Laws of the United States, by and among other things causing the Receivers, who may be so appointed, when they get possession of the properties of the plaintiffs to charge, between Texas and Shreveport, Louisiana, the rates heretofore fixed and named by the Railroad Commission of Texas, in lieu of those authorized by the said orders of the Interstate Commerce Commission and the Constitution and Laws of the United States, and thereby in large part destroy the cause of action herein of plaintiffs, and to that extent oust this Court of jurisdiction heretofore acquired of the subject matter of this suit and of the controversy involved, it

being the theory of the defendant, Looney, among others, that the discriminations found by the Interstate Commerce Commission to exist against said Shreveport, could have been and should be cured by applying and charging, between points in Texas and Shreveport, Louisiana, the rates so named and fixed by the Railroad Commission of the State of Texas, instead of those so fixed by the Interstate Commerce Commission, on traffic moving between Shreveport and points in Texas. That some of the facts and reasons why the plaintiffs refuse to charge the said rates of the Texas Railroad Commission between Shreveport and Texas points are set forth
257 on pages 121 and 122 of the Report of the Interstate Commerce Commission of July 7th, 1916, annexed to the original bill as Exhibit A. The extension of the said Texas Commission System of rates to Shreveport only would cause a material reduction in many of the Interstate rates of plaintiffs to and from points in Eastern Texas, and cause them a substantial loss in revenue; that the extension of said Texas Commission System of rates to Vicksburg, Mississippi, with probable extension thereof to points East of Vicksburg, would cause a very large reduction in interstate rates and revenues of plaintiffs on interstate shipments, to and from points in the State of Texas.

V.

That on the 1st day of March, 1917, the Railroad Commission of Texas issued its order or circular No. 5115, by which said Railroad Commission withdrew or cancelled its circular No. 5060, dated August 28th, 1916, which is copied in the bill of complaint, but said Railroad Commission of Texas has not thereby surrendered the power to hereafter restore said circular No. 5060 or to cancel or attempt to cancel the tariffs therein named and described.

VI.

That on the hearing hereof plaintiffs will introduce exhibits supplementing the record before the Interstate Commerce Commission by showing the financial results of their operations to the end of the fiscal year, which terminated June 30th, 1916. For the first few months of the current fiscal year, which will end June 30th, 1917, the earnings of most of the plaintiffs have been considerably larger than for the corresponding period of many fiscal years theretofore; that plaintiffs fear and are of the opinion that such increased earnings are in a large part temporary, due principally to the stimulation of traffic caused by the very high price of cotton and of other products and commodities, and by the transportation of troops and supplies for the Government of the United States to and from the Mexican border.

258 *Whereof*, premises considered, plaintiffs pray as in their original bill, and further:

a. That your Honors grant a temporary injunction restraining

B. F. Looney, as Attorney General, his successors in office and all others, from filing any suit or suits against the plaintiffs or either or any of them, or against either or any of the companies of whose properties either or any of the plaintiffs are now Receiver or Receivers, for forfeiture of charger or charters or any other rights under the constitution, statutes and laws of the State of Texas, and restraining the said B. F. Looney, individually and as Attorney General, his successors in office and all others from applying to any Court or Judge other than the Judges of the United States for the 5th Circuit and the Western District of Texas, for the appointment of any Receiver or Receivers for the railroads or other properties of plaintiffs, or either or any of them, or of the properties of either or any of the Companies, of which either or any of the plaintiffs are now Receiver or Receivers, and that until the application for a temporary injunction can be heard and decided, your Honors grant a temporary restraining order embracing the relief herein prayed for, to continue in effect until said application for a temporary injunction has been decided.

b. That your Honors grant a temporary injunction restraining the defendant, the Railroad Commission of Texas and the members thereof from hereafter cancelling or undertaking to cancel the tariffs and rates set forth and described in said circular No. 5060, dated August 28th, 1916.

c. That your Honors grant a temporary injunction restraining the defendants, the Railroad Commission of Texas and the members thereof, and B. F. Looney, as Attorney General, his successors in office, and all other persons, from undertaking to require plaintiffs or either or any of them to charge the rates prescribed and
259 named by the Railroad Commission of Texas, where such rates vary or differ from the rates named in said Tariff No. 2-B and the Supplement thereto, for application between points in the State of Texas, by the filing of penalty suits against plaintiffs, or either or any of them, or in any manner or way or by any form or process of law.

d. That on final hearing hereof all relief in this and in the original bill of complaint prayed for be made perpetual.

260 *First Amended Answer of Railroad Commission et als.*

Plaintiffs introduced and read in evidence the pleading styled "First Amended Answer of The Railroad Commission and Attorney General, et al.," filed in Equity 295 by the Railroad Commission of Texas and the Attorney General of Texas, on March —, 1917, which pleading reads as follows:

"To said Honorable Court:

Come now Allison Mayfield, C. H. Hurdleston and Earle B. Mayfield, Railroad Commissioners, and composing the Railroad Commission of Texas, and B. F. Looney, Attorney General of Texas, and Wadel-Connally Hardware Company, defendants in the above styled

and numbered cause, and, without waiving their pleas to jurisdiction filed herein, but insisting and relying upon the same, file this their first amended answer therein and for such answer say:

I.

The allegations contained in the opening and unnumbered paragraph of the bill of complaint are admitted, except the allegations to the effect that certain rates prescribed by the Railroad Commission of Texas for intrastate traffic will be, or have been, lawfully affected or superseded by reason of the matters therein stated, which allegation is expressly denied.

II.

The allegation that each of the plaintiffs is engaged in the transportation of freight, classes and commodities, between the City of Shreveport, Louisiana, and points in the State of Texas, contained in numbered paragraph I of said bill is denied; the remaining allegations thereof are admitted.

III.

Each of the allegations of paragraph II of the bill is specifically denied.

IV.

The allegations contained in paragraph III of the bill to the effect that in the order mentioned the Interstate Commerce Com-
261 mission prescribed a tariff of rates to be applied to intrastate transportation in Texas, and the allegation therein to the effect that it will be necessary to use and apply any classification except that prescribed by the Railroad Commission of Texas, are expressly denied.

As to the remainder of the allegations in said paragraph contained, except as elsewhere in this answer replied to, limited and explained, defendants aver that they are without the information necessary to enable them properly to admit or specifically deny the truth thereof, and of the same they demand strict proof.

V.

The allegation in paragraph IV of the bill contained to the effect that the rates applicable to intrastate shipments in Texas prescribed by the Railroad Commission of Texas are confiscatory and below compensatory rates, and that by reason of the same plaintiffs have not been, or are not, able to earn a fair return on the value of their properties devoted to public use, is expressly denied.

The remaining allegations of fact in said paragraph,—except such allegations as may be construed to mean that the Railroad Commission of Texas considered any of said tariffs mentioned separately and

irrespective of their relation to all other tariffs and matters involved in the application mentioned,—are admitted.

VI.

The allegations of fact contained in paragrapg V of the bill, except as herein qualified, are admitted.

Defendants, however, deny that any of the tariffs, circulars, etc. therein mentioned were permanent, or were intended to be other than temporary pending the final disposition of the case then, and now pending before the Railroad Commission of Texas, in which case many important tariffs, rates, etc., are still involved and undetermined, the final disposition of which may materially affect said temporary tariff, etc., and cause an alteration thereof.

202 The allegations as to the effect of said temporary tariffs, etc., upon the revenues of plaintiffs as compared with pre-existing tariffs, etc., are not admitted.

VII.

The defendants have not information sufficient to enable them either to admit or deny the truthfulness of the allegations contained in paragraph Va of the bill, and, therefore, demand strict proof thereof.

VIII.

The allegations contained in paragraph VI of the bill to the effect that the Interstate Commerce Commission found any particular rates to be reasonable, except as maxima, and that the effect of any supposed finding by said Commission was to adjudicate that any rates prescribed by the Railroad Commission of Texas were unjust and unreasonable, and that plaintiffs are preparing and will file any tariff of rates in accordance with the rates "authorized in said report and order of the Interstate Commerce Commission for application on shipments moving between points in the State of Texas, and between such points and Shreveport" and which rates when so filed will become the lawful rates to be charged on intrastate Texas shipments "to the exclusion of corresponding rates fixed by the Railroad Commission of Texas," and the allegation that it is necessary for the same rates to be charged for similar distances in Texas as are charged between Shreveport and Texas, and that the Interstate Commerce Commission has authority to make any such order as therein described, are each and all expressly denied.

IX.

The allegation contained in paragraph VII to the effect that the Railroad Commission of Texas found any of the rates mentioned in paragraph V of the bill were reasonable and just, for permanent

application, is expressly denied; and in this connection it is shown that said rates were, and were intended to be, of a temporary nature to be applied during the pendency before the Railroad Commission of said application for a general increase in rates, and subject to revision or repeal upon, and by, the final determination of said application.

263 That circular No. 5060 was issued by the Railroad Commission of Texas, as therein alleged, is admitted, except that the allegations as to the reasons for the issuance thereof are not admitted but are expressly denied.

The allegation that the issuance of said circular was intended to, or did, have the effect of "an order establishing a system of rates, tariffs and schedules, and that the former rates, etc.," had been finally superseded, is expressly denied.

The allegations attempting to show that said circular was not issued in conformity to law, and was void for lack of authority, are expressly denied; and, on the contrary, defendants say that the Railroad Commission of Texas had full authority of law therefor. And in this connection it is shown that said circular No. 5060 was, and was intended to be, only temporary in its character and effect, pending the final determination of said general application for an increase in rates, filed by complainants, and others, which case and application had never been finally disposed of, in whole or in part, but said case and application in whole and part is still under consideration by the Railroad Commission of Texas, and said Commission will, upon final determination thereof, grant such relief, as to each and every tariff and rate, etc., there involved as may appear to it to be just and proper, and said circular No. 5060 was issued for the purpose of preserving, and in an effort to preserve the status quo of all the matters involved in said general application, and because of emergency conditions then existing which, in the judgment of the Railroad Commission of Texas, justified and required such action.

In this connection, however, it is shown that heretofore on the 1st day of March, 1917, the Railroad Commission of Texas duly established its order and circular No. 5115 cancelling its circular No. 5060, referred to in paragraph VII of the bill of complaint, and thereby reinstated the tariffs described in said circular No. 5060, which circular No. 5115 reads as follows:

"Circular No. 5115.

General Order, Cancelling Circular No. 5060.

264 Austin, Texas, March 1, 1917.

It is hereby ordered by the Railroad Commission of Texas, that circular No. 5060, issued by this Commission under date of August 28, 1916, and by the terms of which said order certain tariffs and orders

theretofore issued by this Commission were canceled, be and the same is hereby withdrawn and canceled.

This order shall take effect March 1, 1917.

ALLISON MAYFIELD, *Chairman*,
C. H. HURDLESTON,
Commissioners.

Attest:
E. R. McLEAN, *Secretary.*

I hereby certify that the above is a true and correct copy of circular No. 5115, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of said Commission, at the city of Austin, this the 1st day of March, 1917.

E. R. McLEAN, *Secretary.*

X.

The allegations of paragraph VIII of the bill are admitted.

XI.

The allegation in paragraph X of the bill that the Interstate Commerce Commission has fixed any absolute rates by the order referred to, and the allegations therein that the rates fixed by the Railroad Commission of Texas and by the Interstate Commerce Commission are too low to enable plaintiffs to earn a just return, are expressly denied.

XII.

Each and every of the allegations contained in paragraph XI of the bill are denied.

It is especially denied that the tariffs and rates, etc., established by the Railroad Commission of Texas are too low to enable plaintiffs to earn a just return on the fair value of their properties, or that such rates, etc., have operated, or do, or will in the future, operate to deprive plaintiffs of their property without due process of
265 law.

Each and every one of the supposed facts and conclusions stated in that portion of the report, etc., of the Interstate Commerce Commission, referred to in paragraph XI of the bill, are expressly denied, and in this connection defendants say that none of such supposed facts or findings or conclusions are supported by any evidence, or by any sufficient substantial evidence.

Defendants deny that the real value of plaintiffs' properties are as much as alleged in said paragraph of the bill.

They say that they have not sufficient information to enable them to admit or deny the alleged fact that one Thompson testified as stated in said paragraph of the bill, and demand strict proof thereof

if such fact be relevant; but they do say if such testimony was given it is immaterial to any issue now involved, and further deny the accuracy of the same as applied to any or all of the properties of complainants.

They deny that plaintiffs, or any of them, are entitled to include in the valuation of their properties for the purposes of this case "six per cent allowed as representing values of going concerns."

They deny that the returns earned by complainants have been the percentages, or amounts, alleged in said paragraph of the bill.

They deny that the rates proposed by the carriers as shown by Exhibit E mentioned in said paragraph of the bill were or are reasonable rates, and deny all other material allegations with respect to said proposed rates.

They deny the allegations of said paragraph of the bill to the effect that the lines of the Houston & Texas Central Railroad Company and of the Gulf, Colorado & Santa Fe Railway Company are typical "of the transportation and commerce of the State of Texas."

They deny that the formula referred to was correctly, or in good faith, applied to the business and transportation of said two companies and deny the correctness of the result of the application of said formula as described in said paragraph of the bill; they further deny that such formula, if mathematically correctly applied
266 in such instances, is correct or leads to correct results under conditions existing in Texas with respect to commerce and transportation, said conditions being wholly different from the conditions in other localities where the correct application of such formula might lead to correct results; they deny that any such proportion of the valuation of plaintiffs' properties, as is alleged in said paragraph, are correctly or justly ascribable to Texas intrastate business as is there alleged.

And of each and every allegation in said paragraph contained, defendants demand strict proof.

XIII.

Defendants deny the truth of the allegations contained in paragraph XII of the bill to the effect that the rates established by the Railroad Commission of Texas "are much lower than they should be," and deny that the rates cancelled by circular 5060 have been adjudicated to be reasonable rates for permanent application, such rates, as aforesaid, being simply temporary rates applicable during the pendency of said general application before the Railroad Commission of Texas.

The remaining allegations of said paragraph, except those as to the meaning of the statutes therein mentioned, are denied.

XIV.

Each and every of the allegations of paragraph XIII of the bill are denied.

XV.

Each and every of the allegations of paragraph XIV of the bill are denied.

XVI.

The allegations of fact of paragraph XV of the bill are denied.

Further and Special Reply to Paragraphs III, Va, and VI of the Bill.

XVII.

Defendants say that the matters set forth in subdivisions III, Va and VI of the bill do not entitle plaintiffs to the relief prayed by reason thereof, because:

207 (1) Said order of the Interstate Commerce Commission, of date July 7, 1916, does not have the meaning or effect ascribed to it by plaintiffs with respect to Texas intrastate rates because, as is apparent therefrom, said order merely prescribes maximum rates to be applied on interstate traffic and authorizes,—or at least does not prevent,—plaintiffs, or any of them, to remove any discrimination against Shreveport by so reducing their interstate rates, below said maxima, or otherwise, as may be necessary, without disturbing intrastate rates prescribed by the Railroad Commission of Texas. And it is necessary and proper so to construe said order because:

(A) Of the matters set forth in subdivision XXI of this answer, which matters are here referred to and made a part hereof;

(B) Congress had not the power to authorize said Interstate Commerce Commission to make an order in the premises going further than this, and Congress has not attempted to authorize said Commission to make an order in the premises going further than this, but, on the contrary, has expressly limited the jurisdiction of said Commission under such conditions, as follows:

(1) If "the Commission shall be of the opinion that any individual or joint rates or charges * * * for the transportation of persons, or property * * * as defined in the first section of this act" (that is, "from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a territory to another place in the same territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States," etc.; and not "the transportation of passengers or property * * * wholly within one State") "are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act," then, in that event,—

(2) The Commission is empowered "to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case

268 as the maximum to be charged," and thereupon to make an order that the carrier "shall not thereafter publish, demand, or collect any rate or charge for such transportation (that is, the transportation defined in Section 1 of the act) * * * in excess of the maximum rate or charge so prescribed"; and

(3) The Commission is not empowered to fix or regulate the minimum rate, or rates, directly or indirectly, and to give the order the effect and meaning claimed for it herein by complainants would be to hold that the Commission not only prescribed maximum rates, but minimum rates also.

(4) The jurisdiction of the Commission over violations of Section 3 of the act is limited by the act itself to the making of an order requiring the carrier to "cease and desist from such violation to the extent to which the Commission finds the same to exist." And, therefore, since the jurisdiction of the Commission over rates is limited to fixing maximum rates for transportation defined in Section 1 of the act, and since its jurisdiction over discrimination as defined by Section 3 is limited to requiring the carriers to desist therefrom, the carrier, as far as the jurisdiction of the Commission is concerned, is free to desist from such discrimination by alteration of its interstate rates within the maximum prescribed to the extent necessary; and

(5) Since the authority of the State to regulate intrastate rates, and the lack or jurisdiction of the Interstate Commerce Commission over intrastate rates, is expressly recognized in Section 1 of the act, the carrier must remove the prohibited discrimination by alteration of its interstate rates, and must comply with intrastate rates otherwise validly established, and the Interstate Commerce Commission has no jurisdiction over the question of whether the carrier shall remove the prohibited discrimination by raising its intrastate rates, or by lowering its interstate rates to a certain extent, and at the same time lowering its *interstate* rates to a certain extent. The power of the Interstate Commerce Commission is exhausted when it, first, prescribed maximum interstate rates, and, second, when it orders the carrier to remove the discrimination. And if the order should 269 be construed, of itself, to require the complainants not only to observe the rates prescribed by the Commission not only as maximums, but also as minimums, and to require the carriers not only to remove the discrimination but to remove it in a specific way,—i. e., by ignoring the rates prescribed by State authorities and applying higher intrastate rates,—then the order transcends the authority of the Commission to that extent, and to that extent it is, therefore, void.

(II) Said order of the Interstate Commerce Commission hath not the effect claimed for it herein by plaintiffs, and does not entitle them to the relief prayed for, that the Interstate Commerce Commission, first, did not therein or in connection therewith undertake to, and did not pass upon the question of the reasonableness and justice of the intrastate rates complained of, and a finding that certain interstate rates were reasonable and just,—if there was such a finding upon sufficient evidence, which is not admitted but denied,—was not and is not tantamount to a finding that intrastate rates are un-

reasonable and unjust; both rates might be different and still both be just and reasonable; second, said Commission has no jurisdiction, and, by Section 1 of the act, is expressly denied jurisdiction to pass upon the question of the reasonableness of intrastate rates, and if it did so, or undertook to do, in or in connection with said order, then said order to that extent is void and of no force and effect. Therefore, defendants say, that said order of the Interstate Commerce Commission, or the other matter set forth in the bill, *do* not entitle complainants to the relief prayed for, or any relief, at least until it be shown herein that the intrastate rates complained of are, of themselves, unreasonable and unjust, which condition defendants expressly deny as to each and all of the rates so complained of, and demand strict proof thereof.

Defendants say further that, until it be made sufficiently to appear herein that the intrastate rates complained of are of themselves unreasonable and unjust complainants are, and will be, compelled to remove the discrimination dealt with in said order by neces-
270 sary alteration of their interstate rates,—and in this connection defendants refer to and make a part hereof the matter set forth in XXI of this answer.

In this connection also, in the event it should be held that said alleged finding by the Interstate Commerce Commission to the effect that certain interstate rates were reasonable and just and that such finding also involved a finding that the intrastate rates in question were unreasonable and unjust, the defendants say that such findin*f* was made without any substantial evidence, and without sufficient evidence to support it, and the same is, therefore, void and not binding upon defendants herein. In this connection defendants also refer to and make a part hereof the matters set forth in subdivisions XVIII to XXa of this answer.

(III) The order hath not the effect claimed for it by the complainants herein, and does not entitle them to the relief prayed, for that, if otherwise valid, it applies, can lawfully only apply, and should be held herein to apply (with respect to its effect, if any, upon intrastate rates), only to such particular conditions as involve an actual present discridination against Shreveport, because, first, the jurisdiction of the Interstate Commerce Commission is limited to cases, rates and conditions of actual present discrimination by the act itself, and does not extend to imaginary, hypothetical and distantly future discrimination, and, second, if such order was intended to apply, and does apply, to rates, places, or conditions which do not, and which did not at the time of the making of such order, involve actual discrimination, the same is, to that extent, void, and, third, if said order has the application claimed for it herein, and if it should be held to involve a finding that actual discrimination against Shreveport results from the application of the intrastate rates claimed throughout Texas, without regard to distances from Shreveport, localities, competitive and other local conditions throughout widely separated portions of Texas, then such finding is void because plainly in the face of all evidence, because contrary to commonly known

economic, geographical and historic facts and because repulsive to all reason.

271 With respect to said alleged "finding," also, defendants show that, as is apparent from said order and the report accompanying it, no specific finding of fact of discrimination as to any particular article, rate or place, but said alleged finding amounts to nothing more than a general conclusion of law unsupported by any specific finding of fact, or any substantial evidence.

Now, defendants show unto the court that said order, as construed by complainants herein, and upon which construction their prayer is predicated, is sought to be made to apply to all of Texas, and is sought as justification for setting aside all Texas intrastate rates, except "the existing rates between these water competitive points along the Gulf of Mexico or the existing relationship between the rates from and to such Gulf points and the rates from and to Houston, Beaumont, Sabine Pass, and other similar basing points," although the only portion of Texas in which there is, ever has been, or can be, any competition between Shreveport shippers and Texas shippers is a comparatively small strip of Texas territory lying east of Dallas and Fort Worth, Texas, and northeast and east of Houston, Texas, and the Texas-Louisiana State line. There was no evidence before the Interstate Commerce Commission, before the making of said order, to show that any competition did, or could, exist between Shreveport and Texas cities or towns outside of said restricted territory, or that the Shreveport shippers shipped their wares beyond said restricted territory, unless in very exceptional cases. The location and other natural and economic advantages of Texas cities and business centers necessarily, and do as a fact, limit the trade of Shreveport in Texas to a restricted district, and because of the premises said order, even though it were given the broad application claimed for it, would not, and could not, substantially affect the volume of or profitableness of Shreveport's trade in Texas beyond such restricted areas for the manifest reason that the Texas cities to the west and southwest of Shreveport would,—regardless of the rate,—retain their natural advantages of location, etc., as a barrier to Shreveport's trade just as cities in States to the east and north of Shreveport have

272 such natural advantages over Shreveport in those directions.

(IV) Said order is void in its entirety because:

(1) The finding of the existence of discrimination upon which the order is based was made without any substantial evidence, and is not supported by any sufficient substantial evidence.

(2) The finding that the maximum rates prescribed are just and reasonable is not supported by any substantial evidence, or by any sufficient substantial evidence.

(3) Each of said findings, and said order, in every part thereof, are arbitrary and unreasonable.

(4) Said order, and findings, manifestly, proceed upon the theory, and were made because of the Commission's erroneous conception and application of law, that the carriers would have the right, under said order, to set aside intrastate rates and to charge rates for intra-

state transportation, notwithstanding the authority of the State of Texas, through its Railroad Commission, to prescribe and enforce rates on intrastate traffic, and it is obvious that said order would not have been made but for this erroneous conception and application of law.

(5) Said order is void because it is based upon an arbitrary and unsupported assumption that intrastate rates as then and now applied throughout Texas, as compared to the applied interstate rates, operate as a discrimination against Shreveport and an arbitrary and unsupported assumption of discrimination against Shreveport in every part of Texas, notwithstanding many of the carriers affected do not serve and have never served Shreveport directly or by participating in any joint rate or through route thereto and therefrom, and notwithstanding the fact that in the vast majority of towns, cities and localities in Texas where said Commission attempts to find discrimination against Shreveport, no merchant or shipper of Shreveport has ever done, does now, or ever will do any business.

(6) Said order is void because the finding upon which it was made was made for the purpose of enabling the Interstate Commerce Commission to take and exercise the jurisdiction denied it by Sec-
273 tion 1 of the act to prescribe, regulate and control rates and classifications for purely intrastate freight transportation in Texas and for the purpose of enabling said Commission, thus, by indirection, to impose upon Texas intrastate traffic unreasonable and unjust rates and classifications.

(7) While on the face of the record the Railroad Commission of Louisiana, at the instance of the Shreveport Chamber of Commerce, was complainant or petitioner, the carriers affected were the real and substantial petitioners, and were and are the real and substantial beneficiaries of said order as is shown in part by the following allegation of paragraph VI of the bill:

"The rates found in said order of Interstate — Commission of July 7, 1916, * * * to be reasonable rates * * * will, if applied, as permitted by said report and order of the Interstate Commerce Commission, to shipments moving between points in the State of Texas, yield in revenue to plaintiffs several million dollars per annum more than they would, or could earn under the application to the same business or shipments of the rates prescribed by the Railroad Commission of Texas."

And, an order such as this, which would impose upon Texas intrastate transportation such burdens additional to the reasonable and just rates prescribed by the Railroad Commission of Texas, based upon an arbitrary and unsupported assumption of discrimination which has never existed, does not now exist, or ever will exist, is arbitrary, unreasonable, unsupported by any substantial evidence, and is beyond the power delegated to said Commission and involves the exercise of power expressly denied to said Commission by Section 1 of the act regulating interstate commerce, and is, therefore, void.

XVIIa.

Said order is void, at least in part as hereinafter described, for the reason that there was no complaint or evidence before the Commission showing any discrimination of any character or to any extent against Shreveport, Louisiana, by a great many of the carrier-respondents,—including many of the plaintiffs herein,—nor was there complaint or evidence showing discrimination to any
274 extent by any of the carrier-respondents, including plaintiffs herein, except five named hereinafter, except with respect to a limited number of places in Texas. And in this connection these defendants show unto the court the following, to wit:

(I) That the roads of none of the plaintiffs, and none of the carrier-respondents before the Commission, except those of the Texas & Pacific Railway Company and its receivers, the Missouri, Kansas & Texas Railway Company of Texas and its receiver, and, possibly, the Houston, East & West Texas Railway Company, reached or directly served the locality of Shreveport, Louisiana.

(II) That a great many of such carriers, including many of the plaintiffs, had not established, nor had had established for them by the Commission, any through route or rate from or to points on their respective lines and from or to Shreveport, Louisiana, on any of the articles moving under class rates or on any of the commodities dealt with either in said order or in the Texas Classification or the Western Classification.

(III) That such of said carrier-respondents, including many of the plaintiffs herein, as *has* established, or for whom had been established, any through routes or rates at all for traffic between Shreveport, Louisiana, and Texas points, had so established, or had had established for them, such through routes or rates only with respect to certain of such articles or commodities and to or from only a very limited number of stations in Texas, and for many of such commodities, and with respect to many hundreds of stations in Texas, no such through routes or rates had been established; and in this connection it is shown that in the report of the Commission, on page 100 thereof, that there was no such route or rate on "dry goods,"—consisting of a long list of articles listed under dry goods in the Western Classification.

(IV) There was no complaint before the Commission asking that any such routes or rates be established, or showing that the failure or refusal of any or all of the respondent-carriers to establish the same, had caused in the past, or would in the future cause, Shreveport, Louisiana, to suffer any undue prejudice or discrimina-
275 tion, nor was there any evidence before the Commission to show any such condition, nor did the Commission make any finding or conclusion to such effect, nor did the Commission directly undertake, in said order, to require such carriers so to establish such through routes or rates as a whole, or with respect to any particular carrier, or with respect to all or any of the articles or commodities in-

volved in said order or in the Texas Classification or the Western Classification.

(V) That in the absence of such complaints or evidence, and in a proceeding involving a complaint of discrimination against a locality, such as were there involved, the Commission had no lawful jurisdiction to require the establishment of any such through routes or rates.

(VI) That in these respects, as in all others involved, each and all of said carriers, understanding as they did that the establishment of an order meaning what they claim said order does mean would increase their revenues some several millions of dollars per year, wilfully, or at least negligently, failed and refused to make any substantial or bona fide defense in said causes, and said order, if otherwise valid,—which is not admitted, but denied,—affords them no grounds for relief in the respects in this subdivision of this answer set forth.

(VII) These defendants say that the plaintiffs, and each of them, are in possession of such tariffs, etc., as will show what through routes or rates had been established prior to or at the time of the making of said order, and these defendants pray that they be required to produce the same upon the hearing hereof.

XVII*b*.

Said order, if given the meaning claimed for it by plaintiffs herein is void, and affords plaintiffs no grounds of relief, for the further reason that there was no substantial evidence before the Commission to show that transportation conditions, and other pertinent conditions, with respect to the movement of rail traffic between hundreds of points in the various sections of Texas were, or are, of such similarity to such conditions with respect to the movement of
276 traffic to and from Shreveport, Louisiana, as to justify the same rate per mile, or the same classification provisions, to all such movements, but, on the contrary, as a matter of fact, and as such evidence as there was before the Commission showed there was and is no such dissimilarity in such conditions, and the Commission, therefore, in said order and report,—if the same were intended to mean what plaintiffs claim for them,—committed errors of law in attempting to find any such similarity of conditions and in attempting to require the carriers to apply the same rate per mile, and the same classification provisions, to each and every movement within Texas and to each and every movement between Shreveport, Louisiana, and Texas points.

XVII*c*.

The order of the Interstate Commerce Commission conflicts with the principles of law as announced in the report as a basis for the order, conflicts with the indisputable character of the evidence, and has the effect of unlawfully destroying the geographical and other natural advantages of each of the competitors of Shreveport

for Texas business, and gives unto Shreveport an undue and unlawful advantage over each and all of its Texas competitors.

And in this connection these defendants show unto the court the following:

(I) The Commission, in its report, announced the following principles as fundamental bases for its order, towit:

That it is not the function of railroads to equalize the commercial advantages of cities; that each city or locality is entitled to claim the same treatment with respect to rates, distance and transportation conditions considered.

The Commission found from such evidence as was before it,—which evidence these defendants say was wholly insufficient,—that generally transportation conditions throughout Texas, and between Texas and Shreveport, were similar, and, in direct conflict with the undisputed evidence, found that transportation conditions were "practically the same in all distances"; these defendants complain of such conclusions in other portions of this answer, but
277 for the purposes of this subdivision they may be taken as true,—if not, in fact, true they but emphasize the errors herein pointed out.

(II) In said report the Commission said: "The proposition that Shreveport has the right to claim the same treatment with respect to rates to and from Texas as is accorded to towns in Texas twenty-five, fifty or one hundred miles west of Shreveport, distance and respective transportation conditions, considered, * * * is * * * self-evident" (page 118). But the order entered upon the opinion, if intended to mean what the plaintiffs contend it means,—goes so much further than according "the same treatment" to Shreveport as to bring about the conditions described in the opening paragraph of this subdivision, and in this connection it is shown, as is apparent from the record:

(A) Marshall, Texas, is situated about forty-two miles west of Shreveport, Louisiana, on the line of the Texas & Pacific; movements from Shreveport to Texas points, and especially to points on said line, logically move through Marshall, and, to all stations on said line west of Marshall movements from Shreveport, if any, and movements from Marshall move over the same rails; the effect of the order is to destroy the natural advantage of Marshall accruing to it by reason of its westward location as is illustrated in part by the following:

Abney's is a station six miles west of Marshall on said line; the Commission prescribed class rates for distances from one to ten miles, as follows:

1	2	3	4	5	A	B	C	D	E
23	19	16	14	10	10	8	7	6	5

And, under the order as construed by plaintiffs, the Marshall shipper must pay them from Marshall to Abney's for the six-mile haul; but under said order the Shreveport shipper pays the same rate to Abney's as to Marshall, and, therefore, has his traffic for the

six miles hauled free of charge as against the charges above mentioned paid by the Marshall shipper, although the traffic from
278 both places moves over the same rails for the six miles under the same transportation conditions according to the report of the Commission; Longview Junction is a station on said line twenty-three miles west of Marshall and sixty-five miles west of Shreveport. The Shreveport shipper pays to Marshall, on first class, 37 cents per hundred, and from Marshall to Longview Junction, 3 cents per hundred; while the Marshall shipper pays, under said order so construed, 30 cents per hundred for the haul over the same twenty-three miles of track to Longview Junction, under the same transportation conditions as found by the Commission; a corresponding disparity for the twenty-three-mile haul exists with respect to all other classes.

Big Sandy is a station on said line forty-seven miles west of Marshall and eighty-seven miles west of Shreveport; the Shreveport shipper, under said order, pays 37 cents on first class for the forty-seven miles from Marshall, while the Marshall shipper pays 37 cents on first class for the same forty-seven-mile haul under the same transportation conditions as found by the Commission; a corresponding disparity exists for said forty-seven-mile haul for all other classes.

Grand Saline is a station on said line eighty-three miles west of Marshall and one hundred and twenty-five miles west of Shreveport; on the haul to Grand Saline, the Shreveport shipper pays, on first class, 37 cents to Marshall and 26 cents for the haul from Marshall to Grand Saline; while the Marshall shipper pays on the same article for the same eighty-three-mile haul 50 cents per hundred, under the same transportation conditions as found by the Commission.

Dallas is a station on said line one hundred and eighty-nine miles west of Shreveport and one hundred and forty-seven miles west of Marshall; on first class to Dallas, the Shreveport shipper pays 37 cents to Marshall,—which the Commission found was a reasonable rate therefor,—and pays 43 cents for the one hundred and forty-seven-mile haul from Marshall to Dallas; while the Marshall shipper for the same one hundred and forty-seven-mile haul to Dallas pays 70 cents.

279 The Shreveport shipper pays .42 cents per hundred per mile for the entire haul and pays .28 cents per hundred pounds per mile for the one hundred and forty-seven-mile haul, while the Marshall shipper pays .47 cents per hundred pounds for the same one hundred and forty-seven-mile haul, under the same transportation conditions as found by the Commission.

A corresponding disparity exists as to all other stations in Texas beyond Marshall, with respect to traffic from Shreveport and Marshall.

(B) Dallas, Texas, is a station on the lines of the Texas & Pacific, Missouri, Kansas & Texas, and other roads, one hundred and eighty-nine miles west of Shreveport, via the line of the Texas & Pacific. Traffic moving from Shreveport to many stations in Texas logically moves through Dallas. Dallas, according to the claims of Shreveport, is one of its principal competitors. The great bulk of the

trade territory, trade and population, served by Dallas is west of a point half way between Shreveport and Dallas, and, perhaps with respect to more than one-half of such business and territory and population Dallas is situated one hundred miles or more nearly than Shreveport, but by the order,—as construed by the plaintiffs,—this natural advantage is substantially impaired and destroyed, as is illustrated, in part, by the following:

Waxahachie, Texas, is a station on the line of the Missouri, Kansas & Texas, thirty miles south of Dallas and two hundred and twenty miles west of Shreveport; for distances of 20-30 miles said order prescribes class rates as follows:

1	2	3	4	5	A	B	C	D	E
30	25	21	18	14	16	12	10	9	7

For distances of 175-200 miles the Commission prescribed class rates as follows:

1	2	3	4	5	A	B	C	D	E
80	68	56	48	40	42	32	28	24	20

which the Commission found would be just for Shreveport to pay to Dallas, Texas, for the haul of one hundred and eighty-nine miles. But under said order Shreveport, for the haul to Waxahachie, through Dallas, pays for the thirty-mile haul from Dallas to Waxahachie, the following rates on classes: 5, 4, 3, 3, 3, 2, 2, 2, 1; while the Dallas shipper pays 30, 25, 21, 18, 14, 16, 12, 10, 9, 7, for the same thirty-mile haul, for the same articles, over the same rails; the Shreveport shipper on traffic to Waxahachie pays, first class, .36 cents per hundred pounds per mile for the entire haul, and .16 2/3 cents per hundred per mile for the thirty-mile haul, while the Dallas shipper pays 1 cent per mile; and all under the same transportation conditions as found by the Commission. 280

Hillsboro is a station on the line of the Missouri, Kansas & Texas and other roads, sixty-six miles south of Dallas and two hundred and fifty-five miles west of Shreveport; for the haul from Dallas to Hillsboro the Shreveport shipper pays the following rates on classes: 20, 17, 14, 12, 10, 10, 8, 7, 6, 5, or .3 cents per hundred pounds per mile on first class while the Dallas shipper pays: 43, 37, 30, 26, 21, 22, 17, 15, 13, 11, or .65 cents per hundred pounds, first class for the same haul over the same rails and under the same transportation conditions as found by the Commission.

Waco is a station on the line of the Missouri Kansas & Texas and other roads, 100 miles south of Dallas, and 289 miles west of Shreveport. On traffic moving to Waco, through Dallas, the Shreveport shipper pays the following rates on classes for the 100-mile haul from Dallas to Waco: 20, 17, 14, 12, 10, 10, 8, 7, 6, 5, or .2 cents per hundred pounds per mile for the 100 mile haul or 34 cents per hundred pounds per mile for the entire haul of 289 miles, while the Dallas or Waco shipper, for the haul of the same articles over the

same rails, pays: 53, 45, 37, 32, 27, 28, 21, 19, 16, 13, or .53 cents per hundred pounds per mile.

In this connection it is shown further that the traffic from Shreveport to Waco, through Dallas, would also move through Waxahachie and Hillsboro, and while the Shreveport shipper, for the seventy-mile haul between Waxahachie and Waco would pay: 15, 13, 11, 9, 7, 8, 6, 4, 4, or .21 cents per hundred pounds per mile on first class, while the Waco or Waxahachie shipper for the same seventy-mile haul either way, would pay: 44, 43, 37, 30, 26, 21, 22, 17, 15, 13, 11, or .61 cents per hundred pounds per mile, first
281 class; and while the Shreveport shipper would pay nothing for the thirty-four-mile haul between Hillsboro and Waco, the Waco or Hillsboro shipper would pay: 33, 28, 23, 20, 16, 17, 13, 11, 10, 8, on class,—all under the same transportation conditions as found by the Commission.

(C) The examples given above may be multiplied ad infinitum, and a corresponding disparity exists, under said order, as construed by the plaintiffs, with respect to practically all Texas points and with respect to movements in all directions.

(III) These defendants say, as is apparent from the conditions described above, that the only way in which a mileage scale of rates, classes or commodities, can be applied to movements to or from Shreveport, and between all Texas points, without impairing or destroying the natural advantages of location of Texas localities is to apply the same rate per mile throughout the length of the haul, and since the Commission found that the same transportation conditions existed for all distances beween Shreveport and Texas points and between all Texas points, it committed an error in law in not prescribing such a system and in prescribing the rates fixed in the order, and thereby impaired and destroyed the natural and commercial advantages of each and all of the towns and cities of Texas and gave Shreveport an undue and unreasonable preference and advantage over each and all of them.

(IV) The scales of class and commodity rates prescribed in said order,—as construed by the plaintiffs,—have the effect of placing Shreveport, Louisiana, and each and all of its Texas competitors,—if any such it has,—on exactly equal bases with respect to all points in Texas 351 miles, or more, distant from such Texas competitors and situated in the same general direction from such Texas competitors as from Shreveport, and thereby undertakes to require the carriers to perform much more service for the Shreveport shipper than for the Texas shipper at the same price, and thereby destroys the natural advantages belonging to such Texas competitors by reason of geographical location, and thereby undertakes to give unto Shreveport, Louisiana, an undue and unreasonable preference and advantage. Illustrative of this it is shown to the court:

282 (A) That traffic, if any, from Shreveport to points on the line of the G., H. & S. A. Ry. Co. west of San Antonio, Texas, naturally moves through San Antonio; the single line mileage from Shreveport, Louisiana, to San Antonio, Texas, is 441 miles, the shortest joint line mileage being 406 miles. Warwick is a sec-

tion on said line 358.1 miles west of San Antonio; from said station to El Paso on said line there are about 52 stations. Although San Antonio, Texas, is located 441 miles nearer each of such stations, the class rates from San Antonio, Texas, to each of them is the same as such rates from Shreveport, Louisiana, and the same is true, to varying extents, of commodity rates, under said order as so construed.

Malvado is a station 353.7 miles east of El Paso, and 677 miles west of Shreveport, Louisiana, and yet such rates from El Paso to said station are the same as from Shreveport, Louisiana, thereto. There are about forty-one stations on said line east of Malvado, nearer to El Paso than to Shreveport, Louisiana, to which the rates are the same from El Paso as from Shreveport.

(B) Southard is a station on the line of the Fort Worth & Denver City Railway Company, 352 miles west of Dallas, Texas, and 541 miles west of Shreveport, Louisiana; there are about twenty-seven stations in Texas on said line west of Southard; and although Dallas, Texas, is located 189 miles nearer than Shreveport, Louisiana, to each of such stations, under said order, as so construed, the same rates apply from and to Dallas to and from each of such stations as from and to Shreveport, Louisiana, to and from such stations, although such traffic, if any, from or to Shreveport, Louisiana, naturally moves through Dallas, Texas.

Pinto and Darling are stations on the line of the G., H. & S. A. Ry. Co., located respectively 352 and 354 miles west of Houston, Texas, and 584 and 586 miles west of Shreveport, Louisiana, and there are about 92 stations in Texas on said line west of Pinto and Darling; and although Houston, Texas, is located 232 miles nearer than Shreveport to each of such ninety-four stations on said line,
283 the rates from and to Houston, Texas, to and from each of such stations are the same,—under said order,—as the rates from and to Shreveport, Louisiana, to and from such stations.

(V) The matters set forth in subparagraphs (I), (II), (III) and (IV) immediately above are true although the evidence before the Interstate Commerce Commission, without conflict, shows that on very many of the possible movements of less than carload traffic between stations in Texas and Shreveport, Louisiana, either direction, in addition to the expense incurred by the carriers because of excessive distances, costs the carriers at least 8½ cents per hundred pounds more than the receipt, transportation and delivery of like articles shipped between very many stations in Texas costs the carrier, and although the undisputed evidence shows that on carload traffic the receipt, transportation and delivery thereof with respect to very many of the possible shipments from Shreveport to stations in Texas, as from stations in Texas to Shreveport, in addition to the expense incurred by reason of excessive mileage, much more per carload than the receipt, transportation and delivery of like commodities for shipment between very many stations in Texas,—as will appear and be made to appear from the record upon hearing hereof.

XVIId.

Said order is void and affords plaintiffs no grounds for relief herein for the following reasons, towit:

(I) The Act to regulate commerce gives the Interstate Commerce Commission no jurisdiction, either on its own motion or on the petition of a party complaining that existing rates are unreasonably high, to increase, or authorize the increase of either State or interstate rates, and there was no petition asking for increased rates before the Commission, unless the pleadings, formal or informal, of the carriers may be taken as such as is hereinafter contended they should be so taken, and there was no substantial evidence before the Commission upon which it could lawfully fix such increased rates, and in this connection sub-paragraph (II) next following is referred to and made a part thereof, even if it had such jurisdiction; but notwithstanding the lack of lawful power
284 and sufficient evidence it is attempted generally to so do in the order and in this connection subdivision XVIII of this answer is here referred to and made a part hereof.

(II) The issues before the Commission involved rates only on certain articles and commodities, as affirmatively appears from the record, and while the result of the order is to alter, and in many instances increase, or authorize the alteration and increase of such rates and all other rates as well, there was nothing in the evidence before the Commission to show what articles or commodities moved between Shreveport and Texas points, to or from what Texas points, the expense of such movements, the compensatory or non-compensatory result of pre-existing rates, or any of the other factors that must lawfully be taken into consideration in determining the reasonableness of rates,—and this is true with respect to the whole of such traffic between Shreveport and Texas points as well as with respect to each article and commodity and every part and circumstance of such traffic.

It is true that the interested carriers introduced certain records which they claimed showed the general financial and other conditions of their properties as a whole together with general statements as to the results of their operations as a whole through a series of years, but such evidence did not supply the data necessary to enable the Commission to pass upon the issue before it, towit: the reasonableness, vel non, of existing rates, and rates prescribed in the order, as applied to traffic moving between Shreveport, La., and Texas points.

(III) If said order, or the report accompanying it, be held to mean that the Interstate Commerce Commission undertook to, or did, pass upon the reasonableness, or not, of intrastate rates applicable to shipments moving between all points within the State of Texas, and the application of which rates plaintiffs herein are seeking to restrain, or if it be held that such rates were found to be unreasonable, or that said report and order has the effect of making

such rates unreasonable, then said order is void for the reasons:

285 (A) That the Commission is expressly denied the power attempted to be exercised in either of such events by Section 1 of the act to regulate commerce.

(B) That there was no lawful or sufficient evidence before the Commission to justify a finding, directly or indirectly, that such rates were unreasonable, even if it had the jurisdiction to inquire into the same. And in this connection these defendants represent unto the court that the only evidence before the Commission which in any way could be held to bear upon such issues, was the records referred to in the last preceding sub-paragraph hereof, which, if the same could lawfully have been considered by the Commission upon such issue, was wholly insufficient. But it is shown, further, that such evidence, when the same was offered, was duly objected to by various parties to the causes and the Commission, through the member hearing the case and its agent, ruled that the same could not be received over such objections, and suggested to the objecting parties that such objection be withdrawn, and, in order to secure the withdrawal thereof, said member and agent of the Commission assured the objecting parties that the reasonableness of Texas intrastate rates were not in issue before the Commission, and that such evidence would not be, and could not be considered by the Commission upon any such issue, and upon the express assurance that the same would not be considered for such purposes such objections were withdrawn so that such evidence became a part of the record, and in support of this allegation reference is here made to pages 367-397, 540-41 of the record.

Now, these defendants say, that the Commission did not in said order or report pass upon the reasonableness of the intrastate rates here in question and did not intend to do so; but if it did, then, by reason of the premises, said order resulted from the fraud of the Commission and its agent in procuring the introduction of such evidence, and for this reason, if for no other, the same, nor any rights flowing therefrom, should — be enforced by a court of equity, but the same should be set aside.

286 XVIII.

Specific Conditions under which the Order of the Interstate Commerce Commission is Void if Applicable Thereto.

If said order is valid at all,—which is not admitted but denied,—it is void, and affords plaintiffs no bases for the relief prayed, if it be held to apply, under the conditions, and to the extent described in the sub-paragraphs of this subdivision next following, towit:

(I) That the distance, by way of the nearest route, namely, the road of the Missouri, Kansas & Texas Railway Company of Texas, between Shreveport, Louisiana, and the Louisiana-Texas State line, is 20 miles, and the distance between Shreveport, Louisiana, and the nearest station on said route in Texas is 20.5 miles; the distance

between Shreveport, Louisiana, and said State line, via the next shortest route, namely, the road of the Texas & Pacific Company, is 21 miles and the distance between Shreveport, Louisiana, and the nearest station in Texas on said route is 28 miles; the distance between Shreveport, Louisiana, via the road of the Kansas City Southern Railway Company and its connection and subsidiary and said State line is 51 miles in one direction and 53 miles in another direction; the distance between Shreveport, Louisiana, and said State line via the road of the St. Louis Southwestern Railway Company and its connecting and subsidiary, the St. Louis Southwestern Railway Company of Texas, is 64 miles; and the distance between Shreveport, Louisiana, and said State line via the roads of the H. & S. Ry. Co., and the connection, the H. E. & W. T. Ry. Co., is 39.7 miles; and there were and are no other practicable routes via which traffic could or can move between said town and any point in Texas. These facts were well known to the Interstate Commerce Commission and notwithstanding such knowledge, and notwithstanding the further fact that there was no evidence, substantial or otherwise, before said Commission tending to show any discrimination against Shreveport, Louisiana, involved in movements of intrastate traffic for distances less than those named, said order, according to its literal import, undertakes to require the carrier to desist from
287 the further use of the Texas Classification in the movement of intrastate traffic and to apply thereto the "current Western Classification in effect at the time such traffic moves" for all distances, including those named herein, and undertakes to prescribe interstate rates, and other regulations, for movements of interstate traffic for all distances, including those named herein and less, and under the pretended authority of said order the plaintiffs herein have applied, and are applying for all distances, the Western Classification and rates approximating the maxima prescribed in said order to the movement of intrastate traffic in violation of the lawful rates and rules applicable thereto and in violation of the Constitution and statutes of Texas.

Defendants say that since there was not, and could not be, any interstate commerce between Shreveport, Louisiana, and any point in Texas there existed no relation between inter and intrastate commerce for distances less than those named above via the respective routes named, there could be and was no discrimination, and could be and was no evidence of any discrimination against Shreveport, Louisiana, arising out of any such relationship, and that, therefore, the facts did not exist necessary to give the Interstate Commerce Commission jurisdiction over Texas intrastate traffic moving for distances less than those named hereinabove, and such order, if otherwise valid,—which is not admitted but denied,—is not valid or binding, in so far as it may apply to or affect the movement of intrastate traffic for distances less than those named herein, and that the same, to such extent at least, affords plaintiffs no ground for relief herein.

(II) The complaints in the causes in which said order was entered challenged the reasonableness of such rates, and the Commission, on

page 86 of its opinion, states that one of the issues was "the reasonableness of defendants' class rates between Shreveport and points in Texas." Upon this issue the Commission, on page 108 of its opinion, thus states its conclusion: "We are of opinion and find that defendants' present class rates between Shreveport and points in
288 Texas are unjust and unreasonable." The Commission then proceeded, ostensibly upon such evidence as was before it, which evidence it is here claimed was insufficient to support any order whatever,—to prescribe class rates for all distances, which rates, so prescribed, were and are in most instances much higher than the rates in said opinion and order condemned as being themselves unreasonably high. And in this connection the following is shown as true:

(A) In cause No. 3918, 23 I. C. C., 31, being the original proceeding out of which the present case grew upon the evidence before it, the Commission prescribed class rates to be thereafter applied by the Texas & Pacific Railway Company and the Houston, East & West Texas Railway Company on traffic between Shreveport, Louisiana, and points in Texas for distances from 22.7 to 169.4 miles, and from 42.8 to 230.7 miles, respectively, which rates approximately were thereafter applied by said carriers on such traffic. Immediately upon the taking effect of such rates the Missouri, Kansas & Texas Railway Company of Texas established rates approximately the same for like distances applicable to such traffic. These rates were in effect at the time of the making of the present order.

The only evidence before the Commission at the time of the making of the order here involved showed, in so far as it was competent to prove anything, and its competency and sufficiency for any purpose *if* herein denied, that there had been no change in transportation or other conditions in the territory affected between the time of the making of the two orders.

Nevertheless, as stated before, the Commission in the opinion and order here involved prescribed maxima rates for said carriers and others, for the same distances generally exceeding those already in force, and in some instances exceeding them as much as 77 per cent.

Furthermore, in some instances, the rates prescribed as maxima in the order here involved are even higher than those complained of by the Railroad Commission of Louisiana in the original cause, and condemned by the Interstate Commerce Commission in the
289 original, supplemental and present causes as being unreasonably high.

Comparisons showing the rates prescribed for the Texas & Pacific and Houston, East & West Texas in cause No. 3918, and adopted by the Missouri, Kansas & Texas Railway Company of Texas, the rates prescribed in this order, and the percentages of increase are filed herewith, and marked as Exhibits 1, 2 and 3. Again, the case of Railroad Commission of Louisiana vs. St. L. S. W. Ry. Co. et al., No. 3918,—34 I. C. C., 472,—was submitted to the Commission on April 9, 1915, and was decided on June 17, 1915. The relief asked in said cause, as stated by the Commission, was an order requiring: "(1) The establishment of reasonable class rates from Shreveport,

such as were previously prescribed over the lines of the three defendants (in cause No. 3918, 23 I. C. C., 31, referred to immediately above), to all points on the lines of all the defendants (meaning practically all of the Texas carriers); and (2) the application of no higher rates on all commodities from Shreveport to all points on the lines of all defendants than are contemporaneously maintained for like distances from any points on said lines eastbound to destinations in Texas,"—34 I. C. C., 474. The evidence at said hearing, says the Commission,—34 I. C. C., 475,—"shows no material change in transportation conditions over the lines of defendants, either from or toward Shreveport, since this proceeding was first before us" (meaning in cause No. 3918, above referred to). The opinion of the Commission,—34 I. C. C., 476,—recites the fact of an agreement between the complainants and the carriers as being the only thing in the record upon which to fix reasonable maximum class and commodity interstate "throughout the great State of Texas"; thereupon the Commission prescribed a scale of maxima class rates for all distances from 1 to 450 miles as being "reasonable." As stated before, such evidence as there was on the subject showed, and the Commission found, that there had been no change in transportation or other relevant conditions since the decision in cause 23 I. C. C., 31. But notwithstanding the foregoing, the Commission in the order here involved, after having found that the existing rates were unreasonably high,
290 proceeded to prescribe maxima class rates much higher either than those in existence over the lines of the Texas & Pacific, the Houston East & West Texas and the Missouri, Kansas & Texas Railway Company of Texas, and much higher than those found to be reasonable in cause No. 3918,—the increases over the rates prescribed in cause No. 3918 being as much as 77 per cent. Exhibit Nos. 1, 2 and 3 filed herewith as a part hereof shows a comparison between the class rates prescribed in cause No. 3918 and those prescribed in the order here involved.

(*b*) It is true that the Commission, on page 108 of its opinion, said that: "It seems clear from the present record that the class rates prescribed by us (meaning those prescribed in cause No. 3918) are too low for hauls of 60 miles or less," but, defendants say, this was tantamount to a finding that the rates theretofore prescribed, and adopted, for "hauls" of more than 60 miles, were not too low, and, when considered in connection with the general conclusion that such interstate rates were "unjust and unreasonable" to Shreveport, such finding was tantamount to a decision that, for hauls of more than 60 miles, the existing rates were too high.

Defendants say that there was no sufficient evidence to justify a finding that the rates for hauls of 60 miles or less were too low, but if it be held that the evidence was sufficient therefor, nevertheless there was no such evidence to warrant a finding that for hauls of more than 60 miles, and certainly not for hauls from distances ranging between 60 miles and the maximum mileage for which class rates were prescribed in cause No. 3918, the rates should be increased, or otherwise changed, as was done in the order; they say, further-

more, that for hauls of more than 60 miles the order is in direct conflict with the conclusions stated in the opinion.

(III) Defendants show to the court that a substantial portion of the intrastate traffic of Texas moves under each of the conditions in this subdivision described, and that under the supposed authority of said order the plaintiffs, and other carriers, have applied and are applying, and will continue to apply,—if the relief prayed for by them in this cause should be granted,—under each and all of
291 such conditions rates, and rate regulations, of an unreasonable character, in violation of the Constitution and laws of Texas, and have imposed, are imposing and will continue to impose thereby, upon such traffic an unreasonable and unlawful burden.

(IV) Wherefore, defendants say, that said order affords the plaintiffs no grounds for relief herein, and is void even if otherwise valid, with respect to the following conditions:

(*a*) Intrastate traffic for movement of 20 miles or less, moving over the lines of any and all of the plaintiffs, or other carriers.

(a) Intrastate traffic moving over the lines of the Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company, for distances of 53 miles or less; over the lines of the St. Louis Southwestern Railway Company of Texas for distances of 63 miles or less; over the lines of the Houston East & West Texas Railway Company and connections, for distances of 39 miles or less;

(*c*) Intrastate traffic, or interstate traffic, with reference to rates at least, moving over the lines of any and all of the plaintiffs, and other carriers, for distances of more than 60 miles;

(*d*) Intrastate or interstate traffic moving under class rates over the lines of the Texas & Pacific and connections, for distances between 60 miles and 183 miles; moving over the lines of the Houston East & West Texas Railway Company for distances between 60 miles and 231 miles; moving over the lines of the Missouri, Kansas & Texas Railway of Texas and its connections, for distances between 60 miles and 170 miles; and

(*e*) Defendants pray that plaintiffs be denied all relief with respect to each and all of such conditions.

Classification Provisions of Interstate Commerce Commission are Void in Whole or Part.

XIX.

Defendants say that Paragraphs XI and XII of the order of the Interstate Commerce Commission are void in whole or in part, and afford plaintiffs no ground for any relief herein, and that if the same are to any extent valid they are void in so far as they may be
292 held to apply to articles moving in intrastate commerce in Texas with respect to the movement of which no substantial evidence showing an unreasonable discrimination was introduced before said Commission, because of each and all of the matters next herein set forth in sub-paragraphs (I) to (X) of this subdivision of this answer, towit:

(I) By Section 1 of the act to regulate commerce the carriers subject thereto, with respect to the transportation subject thereto, are required, among other things, "to establish, observe and enforce just and reasonable classifications of property for transportation, etc., etc." By Section 15 of said act, in cases arising under Section 3 thereof, the Interstate Commerce Commission is "authorized and empowered to determine and prescribe * * * what individual or joint classification, etc., is just, fair and reasonable, to be thereafter followed," provided only that the Commission shall first "be of opinion" that the "individual or joint classification" is "unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial."

Defendants say, therefore, that before the Commission can lawfully make an order prescribing a specific classification, it must have before it substantial evidence to show, (1) that the existent classification is "unjust and unreasonable or unduly discriminatory, etc.," and a finding of fact to that effect must be made therefrom, and (2) it must have before it substantial evidence to show, and therefrom must find as a fact, that the specific classification so prescribed for future use is "just, fair and reasonable."

Defendants say, further, that said Commission had before it no substantial evidence to show that either the Texas classification or the Western classification was, or is, discriminatory, or non-discriminatory, and, as is apparent from its opinion and order, made no findings of fact thereon in any of such respects.

It is true that said Commission, on pages 121 and 123 of its opinion found that the difference in the Texas classification and the Western classification, as concurrently applied, "is, and for the future will be, unduly prejudicial to Shreveport," etc., which finding, in itself, is not supported by any substantial evidence,—but, as already
293 stated, there was no substantial evidence to show, nor is there any finding of fact thereon, which one of such classifications, by its application, caused, or will cause, any discrimination against Shreveport.

Defendants say, furthermore, that said Commission had before it no complaint sufficiently specific, to require or authorize it to examine and pass upon the reasonableness or justice of the whole or any thousands of the parts of either the Texas Classification or the Western Classification, and that it had no evidence before it sufficient to show either that the Texas Classification in whole or in all of its thousands of parts, was, is or will be, unreasonable, or that the Western Classification, in whole or in all of its thousands of parts, was, is or will be, fair, reasonable or just, nor has said Commission, either in said causes or in any other causes passed upon or determined upon, sufficient evidence any of such questions with respect to either of said classifications and their various parts.

It is true that said Commission, on page 123 of its opinion, said that the "Western Classification" has "in large part received the endorsement of this Commission," referring to the case of "Western Classification, 25 I. C. C., 442, but this statement in the opinion is untrue, in all substantial particulars, as will appear from the record in the cause referred to. And in this connection it is shown:

(A) That the cause referred to in which it is claimed that the Western Classification was endorsed "in large part" was decided on December 9, 1912, and had reference to a few portions of a document then in existence called "Western Classification No. 51," which was a document differing in many hundreds of its provisions from the document in existence at the time of the decision in the causes now involved, and the document called the Western Classification, in existence at the time of the decision in the causes now involved, towit, "Western Classification No. 53," and its supplements, was a document differing in many hundreds of its provisions from the document now in existence under the designation "Western Classification No. 54," and its supplements, and this document, now in existence,
294 may, at the pleasure of the carriers, be superseded tomorrow, or at any other time by a new document containing thousands of provisions differing from the document now in existence; such differences being material in every instance.

(B) That "Western Classification No. 51," in existence on December 9, 1912, contained about, or more than 10,000 items, and most of such items were subdivided into separate items, and each and all materially affected rates; in addition it contained certain general rules materially affecting rates. Said "classification," as appears from the Commission's opinion, 25 I. C. C., 449, made "at from 1500 to 2000" changes in the provisions of the so-called classification pre-existing; these changes were all of said "classification" which was in any way before the Commission and the other thousands of provisions were not at all in issue; and as to these "changes" there were "hundreds—regarding which there is (was) nothing in the record," by way of "direct testimony nor other evidence," according to the Commission's opinion, 25 I. C. C., 499,—aggregating about 157 items, or subdivisions thereof, 25 I. C. C., pages 499 to 606,—and of the provisions actually considered the following is true, as will appear from said opinion:

(*a*) Many of such so-called "items" were simply subdivisions of other "items" and the remainder of the inclusive "items" were not considered.

(*b*) Many of such "items" and "rules" the Commission discussed, but expressed no opinion as to their reasonableness, etc.

(*c*) Many of the provisions of the "items" considered and condemned by the Commission now appear in the "Western Classification" now in effect, and the same thing is true as to the "rules" there considered.

(*d*) As to none of such "items" did the Commission determine the existence of such a similarity of transportation conditions throughout Western Classification territory as to justify the application of any such provisions throughout such territory.

(C) The "current Western Classification in effect at the
295 time the traffic moves," pre-existing the decisions in the case reported in 25 I. C. C., 442 et seq., and continually since, has contained and now contains and probably will contain many hundreds of provisions which have, in all substantial respects, been condemned by the Interstate Commerce Commission in other cases involving

similar provisions, and contained and now contain many provisions in violation of law.

(D) The so-called "current Western Classification in effect at the time the traffic moves" covers a territory bounded on the north by the international boundary line, on the east by the Mississippi river, on the south by the international boundary line, and on the west by the Pacific ocean. The Interstate Commerce Commission, as a matter of common knowledge and otherwise, knew, and the court as a matter of judicial knowledge knows, and it is a fact, that transportation conditions, as a whole and with respect to each of the articles dealt with in said classification, are not and can never be uniform or similar throughout all of such territory, and by reason of such fact said classification, if just and reasonable in any section of such territory, is not fair, just or reasonable in all other sections thereof, and defendants say, the same are not fair, just or reasonable as applicable to the whole of the territory comprised within the State of Texas and especially is not just, fair or reasonable as applicable to many of the different sections of Texas territory, because transportation and other conditions with respect to all or any of the articles and matters dealt with in said classification, as they exist in Texas as a whole, are not similar to such conditions as they exist throughout Western Classification territory, or any considerable portion thereof, and such conditions as they exist in certain portions of the State of Texas are not similar to such conditions as existent in many other sections of said State, and the Interstate Commerce Commission had before it no substantial evidence to show any such similarity of transportation, and other conditions, and did not find any such similarity

296 (E) The Interstate Commerce Commission in making said order had before it no substantial evidence from which to determine the reasonableness and fairness of said classification in whole, or part, or with respect to its application to the movement of intrastate commerce throughout Texas, and throughout the various sections of Texas, with respect to the various factors which must be considered in making such determination, such as weight per cubic foot, intrinsic value per unit, form in which tendered, risk of the carrier, volume of the traffic, regularity of the business, etc., as to any or all of the thousands of articles and matters dealt with in the so-called Western Classification, and said Commission has never considered such factors and has never found such classification to be fair, just or reasonable after such consideration.

(II) Section 15 of the act to regulate commerce requires said Commission in making an order such as is here involved, under Section 3 of the act to prescribe a "just, fair and reasonable" classification, and paragraph XII of the order here involved does not comply with said requirement for that the "current Western Classification in effect at the time such traffic moves" is no classification at all, within the meaning of said provision of the act, and is not, and can not be, a classification prescribed by the Commission for the following reasons, to wit:

(A) Said so-called "classification" is indefinite, is made and is

subject to, and does experience, material changes, from time to time, by and through agencies other than the Interstate Commerce Commission, as is more fully alleged in paragraph (B) next succeeding, and meant one thing on the date of the making of such order, and meant, or might mean, a different thing on each succeeding day. The variations in said so-called classification, from time to time, since the making of such order, will be shown in detail upon the hearing hereof, but with respect thereto the following is true:

(*a*) The "Western Classification" current at the time of the decision in 25 I. C. C., 442, as appears from the opinions in said
297 cause, made "about from 1500 to 2000" changes in individual items, and many substantial changes in material rules, over the "Western Classification" immediately pre-existing; and between the time of the decision in that case and the time of the decision in the cause here involved the classification there before the Commission was superseded by "Western Classification No. 52," which, in turn, was superseded by "Western Classification No. 53," each containing thousands of provisions, and each differing from the other in many hundreds of provisions.

(*b*) At the time of the decision in the cause here involved "Western Classification No. 53," was current, and to it, by number, specific reference is made in the order in question, and as shown by the opinion of the Commission here involved it contained more than 10,000 items; but on June 27, 1916, "Supplement No. 20" to "Western Classification No. 53" was issued, to become effective August 15, 1916, cancelling, adding to, or otherwise changing, in material respects, hundreds of items and provisions as contained in "Western Classification No. 53" as it existed on the date of said decision, such changes are too numerous to be here alleged, but the same will be made to appear upon the hearing hereof; and on July 15, 1916, "Western Classification No. 54" was issued, to become effective September 1, 1916, and which cancelled, added to, or otherwise changed, in substantial respects, many thousands of provisions pre-existing materially affecting rates,—such changes are too numerous to mention here, but the same will be made to appear upon hearing hereof.

(B) The act to regulate commerce, as aforesaid, requires the Interstate Commerce Commission, itself, to prescribe a "just, fair and reasonable classification," and nowhere does said act undertake to authorize said Commission to redelegate this authority to the interested carriers, or other persons, or bodies.

But defendants alleged the so-called "Western Classification," as it exists on any particular day, is a document, or series of documents, prepared by many of the railroads of the United States,
298 through their agents, by means of a bureau, which bureau or agency is in no sense an official body authorized to exercise a function of government, but is a body constituted by, and under the dominion and control of, such railroads; and that said so-called "classification," as it exists at any particular time *in* binding upon any of such railroads only so long as they may care to be bound thereby, and is subject to change by any one or more of them, in any one or all of its provisions, and constantly suffers such changes

In this connection, defendants further show to the court that not only has such bureau no lawful right to make or prescribe, or remake or represcribe, a classification for the Interstate Commerce Commission, or to exercise any other function of government, but it, and the great majority of the railroad companies represented by it, have no right, under the laws of the United States or the State of Texas, to do business in Texas and have no lawful right to prescribe rates or rate regulation for Texas intrastate traffic.

Wherefore defendants say that paragraph XII of said order does not prescribe such a classification as is contemplated by the act to regulate commerce, but simply undertakes to redelegate to such railroad companies as may be members of said bureau the power, from day to day, to prescribe classification provisions; that the Interstate Commerce Commission not only has not found, nor had it before it any substantial evidence upon which to find, that said so-called "current Western Classification in effect at the time such traffic moves" was, or is, or will be, "just, fair and reasonable," but in view of the fact that said so-called classification may be changed from day to day, without the intervention of the Commission, it could not find that the same, for future use, would be "just, fair and reasonable."

(III) The complaints before the Interstate Commerce Commission related to certain named commodities and articles, and there was no evidence before the Commission with respect to any article or commodity except those specified; there was no evidence before the Commission to show that there was, ever had been, or ever
299 will be, any traffic between Shreveport, Louisiana, and Texas points in any articles or commodities to show that, under any circumstances or conditions, there had been, would be, or could be, any discrimination against Shreveport except with respect to the articles and commodities specifically named, and the Commission made no finding of discrimination *with* except as to those articles specified in its opinion and order. Nor was there any complaint or evidence before the Commission with respect to the reasonableness or unreasonableness of the Texas State or the interstate rates, as affected or controlled by the Texas classification or the Western Classification, or any articles except those specifically named in the opinion and report of the Commission, nor did the Commission make any finding or order with respect to any article not named in such opinion and order.

But notwithstanding the total lack of complaint, evidence and findings with respect to many thousands of articles not mentioned or dealt with — the opinion, the Commission, in paragraph XI ordered the carriers to desist from the further use of the Texas Classification, and by paragraph XII of the order required them to use the "current Western Classification in effect at the time such traffic moves," and thereby undertook to authorize the carriers materially to alter, increase or decrease the rates, both State and intrastate, on all articles that might be tendered for transportation, State or interstate, without respect to the fact of whether any complaint had been made, or evidence had been introduced or findings made by the Commission with respect to the reasonableness or unreasonableness of such rates,

or the discriminatory or non-discriminatory character thereof, and thereby undertook to delegate to the interested carriers the power, to be exercised at pleasure, to make and remake State and interstate rates on many thousands of articles in the traffic in which there was no intimation that Shreveport was, is or will be, in any way interested.

The articles, etc., which were in no way involved in said causes, and with respect to which the carriers were attempted to be given authority to fix State and interstate rates, via the "current Western Classification in effect at the time such traffic moves," are too numerous to mention, but the same will be made to appear upon the hearing hereof, and among such may be mentioned the following as representative thereof, to wit:

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Live-stock L. C. L. Not dealt with in the complaint, evidence, findings of the Commission. Under Texas rules L. C. L. live-stock take actual weight, and representative rates are as follows: 21 miles, 30 cents; 101 miles, 70 cents; 150 miles, 94 cents. Under Western Classification now in effect, horses, mules, jennets or domestic horned animals, except bulls, take a minimum weight, for one animal, of 2000 pounds, and take first class rates, such rates for representative distances are as follows: 21 miles, 30 cents; 101 miles, 57 cents; 150 miles, 70 cents. The charges for the transportation of a yearling, uncrated, weighing 500 pounds under the two systems would be as follows:

Twenty-one miles, Texas system, $1.50; Western Classification, $6.00. One hundred and one miles, Texas System, $3.70; Western Classification, $11.40. One hundred and fifty miles, Texas System, $4.70; Western Classification, $14.00.

The actual effect of such provision, therefore, is to increase the rate on such a shipment to the following figures for the distances given:

Twenty-one miles, $1.20 per 100 pounds, as against Texas rate of 30 cents. One hundred and one miles, $2.38 per 100 pounds, as against Texas rate of 7p cents. One hundred and fifty miles, $2.80 per 100 pounds, as against Texas rates of 94 cents.

This result, too, has been brought about without any complaint, evidence or finding that the Texas rate was unreasonable or discriminatory, or that the increased rate is reasonable.

(VI) Without any complaint or evidence, before it, and without any finding that the carload minima fixed by the Texas Classification and Texas rules on many hundreds of articles moving in intrastate commerce in Texas, were, or are, or will be unreasonable or discriminatory, and without any evidence before it showing, or any finding that the carload minima provided by the "current Western Classification in effect at the time the traffic moves" were, or are, or will be, as to any of such hundreds of articles, "just, fair and reasonable," the order of the Interstate Commerce Commission, in paragraphs XI and XII thereof, undertakes to require the carriers to desist from the use of the Texas Classification and rules as to carload minima on such articles moving in intrastate commerce in Texas, and undertakes to require the carriers to apply the pro-

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visions of the "current western Classification" to the whole of Texas intrastate commerce. The articles, not in any way involved in the complaints, evidence or findings in the causes before the Interstate Commerce Commission, and whose carload minima is by said paragraphs of the order changed—and generally increased—through the application of the Western Classification as it may exist at the pleasure of the interested carriers at any time are too numerous to mention here, but the same will be made to appear upon the hearing hereof, but as representative thereof the following may be mentioned in this connection:

Wool, cement, fertilizers, scrap iron (not junk), lime, salt, sugar, molasses, logs and fence posts (standard scale), packing house products and fresh meats, canned goods, cartridges, hides in carloads and less, oil (crude and fuel, including distillates and creosote), iron rails and fastenings and railway supplies and materials.

With respect to the above articles the Interstate Commerce Commission, on page 95 of its opinion, says: "Complaints have expressed satisfaction with the proposed adjustment of rates on these commodities, and we shall make no finding with respect to their reasonableness," and no such finding was with respect either to the rates thereon or the classification provisions, Texas or Western, applicable thereto.

Nevertheless, *by* the application of the Western Classification on many or all of such articles changes the carload minima on such traffic intrastate, and thereby materially affected rates thereon.

(V) Said "current Western Classification in effect at the time the traffic moved," operates, and will operate, to change the rules prescribed by the authorities of the State of Texas with respect
302 to the receipts, transportation and delivery of articles of intrastate commerce in many respects other than those mentioned in other subdivisions of this answer, and as to which respects there was no complaint or evidence before the Interstate Commerce Commission and upon which said Commission made no findings of fact, and which respects will be made to appear upon the hearing hereof.

(VI) The "Western Classification" in effect at the time of the making of said order, and the one in effect now, actually in many material particulars, conflicted and now conflict with practically all of the provisions of said order, except paragraphs XI and XII thereof.

(VII) Said classification at the time of the making of such order contained, now contains, and will probably continue to contain many provisions undertaking to relieve the carriers of liabilities imposed upno them by law, both State and Federal, and undertakes to authorize the carriers to do many things which they are prohibited from doing by law, and undertakes to relieve the carriers of many duties *owned* by them under the law both State and Federal.

By reason of the fact that such instances are numerous it is impracticable to set them forth in this connection, but the same will

be made to appear upon the hearing hereof, and among such instances may be mentioned the following:

Said so-called classification provides that where a shipper "refuses to declare value at time and place of shipment goods will not be accepted for transportation," such condition is a general one, and is also specifically applied to live stock and many other commodities; whereas, defendant- say, a common carrier under State or Federal law has no right to refuse to receive goods, etc., for transportation upon any such condition.

Said so-called classification also undertakes to require the shipper to declare the value of the goods, live stock, etc., at the time and place of tender, and provides that "ratings on various articles are conditioned upon" such declared value, and, in the case of live stock, and other commodities, the shipper is limited in the value he may declare to certain maxima as a condition to securing a rate;
303 whereas, defendants say, a common carrier has no lawful power thus to coerce a shipper into an unfavorable contract, or thus to limit its liability.

Said so-called classification provides that a carrier may not accept for transportation "property of extraordinary value," such as bank bills, coin or currency, deeds, drafts, notes or valuable papers of any kind, jewelry, postage or revenue stamps, government stamped envelopes, postal cards or wrappers, precious metals or articles manufactured therefrom, precious stones"; whereas, defendants say a common carrier has no lawful right to refuse to receive such articles for transportation or thus to limit its duties.

(VIII) Said so-called "current Western Classification in effect at the time such traffic moves" provides, and may, at the pleasure of the interested railroads, provide for any limitations of the carrier's liability, some of which limitations might be valid as applied to interstate shipments under the Federal laws, but which when applied to intrastate shipments under Texas laws, would be invalid, and in such instances the effect of paragraphs XI and XII of the order of the Interstate Commerce Commission, if the same should be held to justify the disobedience of Texas Classification provisions and laws with respect to such instances and to substitute therefor the Western Classification provisions, would be to amend the Acts of Congress,—and especially the act known as the Carmack amendment,—so as to make them apply to intrastate transportation; whereas, Congress expressly limited the operation of such acts to interstate shipments.

And in such instances, furthermore, defendants say there was before the Interstate Commerce Commission no complaint of any discrimination against Shreveport by reason of the differences in the rules of liability applying to inter and intrastate traffic, respectively, and there was no evidence, substantial or otherwise, to support such a complaint or to justify a finding of discrimination arising therefrom, and said Commission made no such finding.
304 Such instances are too numerous to mention in detail in this connection, but the same will be made to appear upon the hearing hereof, and as illustrative thereof the following may be here mentioned.

(IX) Said "Western Classification," at the time of the making of such order, conflicted and now conflicts with said order, and may be made to conflict therewith at any time in any way which may commend itself to the whim or caprice of the bureau making and remaking such classification. By reason of the great number of instances in which such conflicts now exist, it is impracticable to allege them all in detail herein, but such conflicts will be shown upon the hearing hereof. Among such conflicts, however, may be mentioned the following:

(*a*) The carload minimum fixed by said so-called classification, in practically every instance, is different from, and generally higher, than the carload minima fixed for various commodities in the opinion and order of the Commission.

(*b*) By reason of the provisions of said so-called classification the rates to be applied under it in many instances will exceed the maxima rates prescribed by the order of the Commission; among such instances may be mentioned the following:

The maxima rates in the order prescribed for "iron and steel articles," carload minimum 30,000 pounds, "to or from points in common point territory," for single line application, is 60 per cent of fifth-class rates, subject to a maximum of 32 cents, etc.; whereas, under the so-called Western Classification, now in effect, many of such articles would take the full third, fourth or fifth-class rates, with a carload minimum, in many instances, of 36,000 pounds.

Said so-called "Western Classification" provides that, "unless otherwise provided," "when property is transported subject to the provisions of the Western Classification," the acceptance and use are required, respectively, of the "uniform bill of lading," "straight" or "order" (bill of lading), and provides "for different rates and for different forms of bills of lading to be used, respectively, as
304½ the consignor may elect to have a limited liability or a common carrier's liability service," and provides that "property carried not subject to all the terms and conditions of the uniform bill of lading will be at the carrier's liability, etc.,—and the rates charged therefor will be ten per cent (10%) higher (subject to a minimum increase of one (1) cent per one hundred pounds) than the rate charged for property shipped subject to all the terms and conditions of the uniform bill of lading," and thereunder, if the same is valid, the carriers may add 10 per centum to the rates prescribed in the order.

(X) Wherefore, by reason of each and all of the matters set forth in sub-paragraphs "(I)" to "(IX)" inclusive, hereof, the defendants say:

(A) That paragraphs XI and XII of said order are void in their entirety and afford the plaintiffs no ground for relief herein and no justification for failing and refusing to comply with the provisions of the Texas Classification, and the same should be declared void and set aside, in so far as applicable to Texas intrastate commerce.

(B) That said paragraphs of said order, if not void in whole, are void, and would be void if otherwise construed, in so far as they

may undertake, or be held to undertake, to require the carrier parties thereto, including plaintiff-, to desist from complying with the Texas Classification and to apply the provisions of the "current Western Classification in effect at the time such traffic moves" with respect to articles of intrastate commerce except such articles as substantial evidence before the Interstate Commerce Commission may have shown to be actually invoived in an unreasonable discrimination against Shreveport, Louisiana, and the people thereof, and for such alternative relief defendants pray.

XX.

The Order of the Interstate Commerce Commission, if Given the Litteral Effect Claimed for it by Plaintiffs, is Unreasonable and Unjust.

(I) These defendants say that the order of the Interstate
305 Commerce Commission here involved was not intended, and could not lawfully be intended, to be given the literal effect claimed for it by plaintiffs herein, and if the same should be given such effect it would be, and is, void, in whole or part, because in excess of the lawful jurisdiction of the Commission, because of unreasonableness and injustice, and because the same would, under such construction, go much further and have an effect much more extensive than was, or is, or will be necessary or proper in order to cure and remove any discrimination,—the only thing over which the Commission had any jurisdiction, in so far as intrastate rates were, or are, concerned,—that may have existed, or does or will exist, against Shreveport, Louisiana.

And, in this connection, these defendants allege, and will offer to prove, that the following conditions existed at the time of and precedent to the making of said order, exist now, and will continue to exist in the future, tcwit:

(1) That the territory in Texas in which Shreveport, Louisiana, or the people thereof have done, or do, or can do. business, by reason of economic, geographical, natural, commercial and other relevant conditions is limited in extent, as is shown, in part, by the following facts:

(A) The number of towns in Texas between which and Shreveport there has been any real traffic of any character at any time since July 1, 1913, do not exceed 150, which towns are, for the most part, situated in Eastern Texas in a territory reasonably tributary to Shreveport, and of such traffic, which was small in volume, a large and material portion was in, and with respect to articles and commodities, no way involved in the complaints, petitions or evidence before the Interstate Commerce Commission; whereas, the plaintiffs seek to make such order apply as to rates, to all of the traffic in the articles named in said order moving in any direction to or from or between each and all of the more than 2000 towns in Texas, and seek to make such order, as to paragraphs XI and XII thereof, apply to each and every movement by rail of any article or

commodity in any direction, for any distance, in Texas with-
306 out respect to whether or not any portion in Shreveport, Louisiana, has ever, is now, or ever will be interested therein. And as illustrative of the matters here set forth it is shown to the court that the rates and classifications provisions dealt with in said order have actually been applied on traffic between Shreveport, Louisiana, and Texas points, and between points in Texas, since November 1, 1916, and, although the alleged discriminatory conditions have not during said time existed, there has been — rail traffic of any kind between Shreveport, Louisiana, and *not* more than 100 Texas points, and, for the most part, such Texas points are located in Eastern Texas in the territory reasonably tributary to Shreveport, and of such rail traffic,—itself small in volume,—a comparatively large and material portion was in articles and commodities in no way involved in the complaints, petitions or evidence before, or order of the Commission.

(B) That the only towns or cities in Texas, if any, with which Shreveport has ever competed, does compete, or can ever compete, in the traffic in any article or commodity *or article*, and in whose favor it can reasonably be claimed any preference or advantage over Shreveport has existed or can exist, are a small number of towns or cities of commercial importance supplying the restricted territory in which Shreveport can, under any circumstances, reasonably expect to do business; whereas, under the order as construed by the carriers, the rates and rate regulations governing the movement of each and every article or commodity to, or from, or between each and every city, town, village or hamlet in Texas, regardless of direction, distance removed from Shreveport, natural, geographical or other conditions, are to be controlled by said order and the tariffs and classification provisions filed thereunder.

(II) That although for many years Shreveport, Louisiana, has enjoyed unreasonably low inbound rates on articles or commodities which it could, under any circumstances, reasonably expect to market in Texas, and has thereby enjoyed a substantial and unreasonable advantage over each and all of its Texas competitors,
307 the volume of rail traffic per year between Shreveport, Louisiana, and all points in Texas has not exceeded in weight — tons, and in rail charges has not exceeded $—, and the volume thereof has not amounted to more than a small fraction of 1 per centum of the total Texas intrastate freight traffic. And although said order has been given literal effect, through the tariffs and classification provisions applied by the carriers since November 1, 1916, and although thereby any supposed discriminatory conditions have not existed during said time, the total volume of traffic between Shreveport, Louisiana, and all Texas points, during the months of November and December, 1916, did not in weight exceed — tons and in rail charges did not exceed $—. And of this traffic, both before and after November 1, 1916, a comparatively large and material portion was in and with respect to articles and commodities in no way involved in the order of, or in the complaints, petitions or evidence before the Commission.

(III) Wherefore, these defendants say, that said order, if given the literal effect claimed for it by the plaintiffs, would be void and too general and indefinite to be enforcible, and it can not be, or should not be, held that the Interstate Commerce Commission intended for such order to be given any such effect, and it must be, and should be held, that the Commission intended said order to have no effect further than necessary to remove any unreasonable discrimination as may have existed, or does exist, against Shreveport, Louisiana, and whether so intended or not by said Commission the order should be so construed and limited, if given effect at all, and for such relief these defendants pray.

XXa.

Said order is void, unreasonable, unjust and arbitrary, and affords plaintiffs no grounds for relief herein, for the further reason that the Interstate Commerce Commission, upon the objection of the carriers affected, including plaintiffs, and upon objection of the Railroad Commission of Louisiana, and upon its own motion, refused to hear and consider material evidence concerning the issues involved, and thereby committed errors of law. And in this
308 connection these defendants show unto the court the following, towit:

(I) That the Commission erroneously ruled and held that differences in what were generally called "commercial conditions" as existing with respect to Shreveport, and with respect to various localities in Texas were immaterial to any issue involved in the causes before it and would not be, and were not, considered by it; and erroneously failed or refused to consider the effect of the rates and classifications named in said order upon the business and enterprises within the various sections of the State and upon the producing and consuming public, and, while such evidence as there was upon the subject showed that the business and enterprises within the State of Texas had grown up under the Texas Classification, and under the existent rate system, as a whole, and with respect to common point and differential territory, as therein dealt with, and had become adapted thereto throughout a period of many years, and that the changes in such system and classification as attempted to be made in said order, under the construction given to it by the plaintiffs, would seriously disrupt general business and competitive, and other relative conditions throughout the State, and the various sections thereof, the Commission made an order, which, if given the construction claimed for it by plaintiffs, has disrupted, and will disrupt, has unreasonably injured, and will injure the business and enterprises of the State, and has imposed, and will impose, upon the consuming and producing and commercial public unreasonable burdens estimated by plaintiffs herein at many millions of dollars per year, although the Commission expressly ruled that the question of the reasonableness of said Texas rates and classification provisions were not involved in the causes, and were not involved as a matter of fact or law.

(II) The Commission refused to consider material and relevant evidence offered for the purpose of showing that Shreveport, Louisiana, or the complainants in the cause had suffered, were suffering, and would suffer, no unreasonable or unlawful discrimination or disadvantage, and that Texas cities, towns and tradesmen
309. enjoyed, enjoy or will enjoy any unreasonable or unlawful advantage or preference over Shreveport, Louisiana, by reason of the fact that Shreveport, Louisiana, and its people enjoyed, now enjoy and will continue to enjoy inbound rates on each and all of the articles about which the complaint arose, from much territory, much lower than were, are, or will be enjoyed by Texas cities and towns and the people thereof or the same, and other articles coming from the same, or other territories, which evidence, if the same had been admitted and had been considered, would have shown that Shreveport, Louisiana, had in fact enjoyed an undue and unlawful advantage over her Texas competitors. And in this connection it is shown to the court that while the Interstate Commerce Commission refused to admit or consider any evidence tending to show that Shreveport, Louisiana, enjoyed an undue and unreasonable preference by reason of inbound rates, it did admit, and in large part based its order upon evidence tending to show that Shreveport, Louisiana, was discriminated against by reason of inbound rates from Texas points, and did admit, and in large part based its order upon, evidence which it held to show an undue preference and advantage enjoyed by Houston, Dallas, Wort Worth and other cities and towns in Texas by reason of inbound rates.

In this connection, also, it is shown that while the Commission, on pages 118 and 119 of its opinion, said "We are dealing here (meaning in said cause) with outbound rates," and while, as aforesaid, the Commission on this mistaken view of fact and law, excluded all evidence as to inbound rates offered for the purpose of rebutting the complaint as to discrimination against Shreveport, it then proceeded, both in its opinion and order, to deal with both "inbound" and "outbound" rates to and from Shreveport and to and from all cities and towns in Texas, and, as the record will show, the conclusions as to discrimination against Shreveport, Louisiana, are supported,—if supported by sufficient evidence at all, which is not admitted but denied,—with respect to many commodities and articles, such as live stock, peanuts, flour, hay and grain, fruits, melons and vegetables, etc., etc., by evidence tending to show
310 that Dallas Houston, Fort Worth and other Texas cities and towns enjoy an advantage by reason of comparatively low "inbound" rates on such articles and commodities thereto as compared with the "inbound rates" thereon to Shreveport.

(III) Defendants say that in the proper determination of the question as to whether or not any particular locality suffers an undue discrimination as compared with another locality, or localities, it is necessary for the Commission to hear and consider all facts tending to show the relative advantages and disadvantages of all localities involved and the probable effect of the proposed order, and it is unjust, unreasonable and unlawful for the Commission to hear, and from

such hearing determine, that Dallas and other Texas cities and towns enjoy a preference by reason of certain inbound rates and to refuse to hear or consider evidence tending to show similar facts with reference to Shreveport, and refusing to consider such evidence against Shreveport and in favor of Texas cities it committed such an error as to render its order, unjust, unreasonable, discriminatory and void, and such order, for such reason, should be declared to be void, and should not be considered as a ground for the relief herein prayed by the plaintiffs, and for such relief defendants pray.

But, in the event the court should hold that said order is not void for such reason, that, in order that the court may have before it all relevant facts, or other reasons, enabling it to do equity in this cause, and enabling it to make or render such a judgment as will uphold such order to the extent necessary to cause a removal of such unlawful discrimination as the record and evidence may show exists against Shreveport, Louisiana, and at the same time to protect the intrastate commerce of Texas from the unreasonable and unlawful burdens placed upon it by the plaintiffs under the pretended authority of said order, defendants pray that the court will hear and consider such evidence as may be relevant and material to show that Shreveport, Louisiana, enjoys an undue and unlawful preference and advantage over Texas cities and towns by reason of its low in-
311 bound rates, which evidence was not introduced before the Interstate Commerce Commission for the reason stated.

Even if Classification Provisions of the Order of the Interstate Commerce Commission are not Void in Whole or in Part, Plaintiffs Have not Complied Therewith.

(I) Even if paragraphs XI and XII of said order should be held to be valid, in whole or part, nevertheless, they afford plaintiffs herein no basis for the relief prayed, and plaintiffs herein have not shown, and can not show, any equity flowing therefrom, for the reason:

(A) Texas Lines' Tariff 2-B, which plaintiffs claim embodies the lawful rates and rules applicable to intrastate commerce of Texas, in many respects, is not based upon, does not conform to, and is not warranted by said paragraphs of the order. Such respects are too numerous to allege in detail, but the same will be made to appear upon hearing hereof, and as illustrative thereof the following is shown in this connection:

(a) Paragraph XII of the order purports to require the carriers to apply the "current Western Classification in effect at the time such traffic moves"; whereas, by the express terms of such tariff, numerous instances are provided for when and where the Western Classification shall not apply, but when and where some other classification will apply, with respect thereto, said tariff contains the following and other general provisions:

Governed, except as otherwise provided herein (See Items No. 1, page 54), by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12), or reissues thereof; and by Southwestern Lines' Classification

Exceptions and Rules Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

Item No. 1.

(*a*) Exceptions to the Western Classification, and rules and conditions, published in the Southwestern Lines' Classification Exceptions and Rules Circular No. 1-G, F. A. Leland's I. C. C. No. 1137, or reissues, which are shown as applying generally on traffic from
312 points in other States to Texas points, will apply between Texas points, also between Texas points and points shown in Group A, page 13. (See paragraphs (*d*), (*e*) and (*f*) of this item.)

(*b*) Where such exceptions, rules and conditions are shown as applying between Texas and Louisiana points, they will also apply between Texas points. (See paragraph (*d*) of this item.)

(*c*) Where such exceptions, rules and conditions apply only from points in certain States or a restricted territory, to Texas points, or from Texas points to points in certain State-, or a restricted territory, the same will apply only in accordance with such restrictions. (See paragraph (*d*) of the item.)

(*d*) Exceptions to Western Classification and rules and conditions published herein will apply on traffic subject to rates published in this tariff, and will take precedence over exceptions, rules and conditions, published in Southwestern Lines' Classification Exceptions and Rules Circular No. 1-G, as referred to in paragraphs (*a*), (*b*) and (*c*).

(*b*) Whereas, said paragraph of the order purports to require the plaintiffs to apply the Western Classification, the plaintiffs, in said tariff, instead of applying the Western Classification, or any other pre-existent classification, make a new classification of their own to apply in many instances and under many conditions.

(*c*) Whereas, said Western Classification undertakes to prescribe the forms for bills of lading to be used by the carriers, the plaintiffs herein, in said Texas Lines' Tariff No. 2-B makes the rates therein provided for dependent upon and different forms of bills of lading materially affecting the rights of the shipper.

(*d*) Said order provides that the rates therein prescribed shall apply on "hand implement binder twine and parts thereof," and hose (rubber) as described in Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 12), whereas said Texas Lines' Tariff No. 2-B provides that same shall be governed by other and different classification provisions.

(II) The restraining order heretofore issued in this cause should be dissolved, and no injunction, temporary or permanent,
313 should issue herein, nor should other relief be granted plaintiffs, for the reason that, among other things, Texas Lines' Tariff No. 2-B which plaintiffs claim the right to apply on Texas intrastate traffic, as well as interstate traffic, and which they have applied since November 1, 1916, by reason of said restraining order, and which they will continue to apply if such relief should be granted them herein contains many provisions in violation of law, and the

subject matter of which provisions were not before the Interstate Commerce Commission by complaint or evidence and with respect to which said Commission made no findings of fact, which provisions are too numerous to allege here in detail, but which will be made to appear upon hearing hereof, and among which, as illustrative, may be mentioned the following:

(A) All of the rates and transportation thereunder provided for in said tariff are conditioned, thereby upon the acceptance by the shipper of all the terms of the carrier's bills of lading, which bills of lading, in existence at the time of the publication of said tariff, and since, were made by the interested carriers themselves, and which have been and may be changed from time to time so as to contain such stipulations and limitations of liability as such carriers may care to insert therein, and which stipulations and limitations may be different, so far as applicable to intrastate commerce, for different carriers.

Among the stipulations and limitations of liability contained in such bills of lading, for the application of which the carriers derive no authority from law or the orders of the Interstate Commerce Commission, are the following:

(a) "That in case of total loss of any of the live stock covered by this contract, from any cause for which the carrier will be liable, payment will be made therefor on the basis of the actual cash value at the time and place of shipment, but in no case to exceed $150.00 for each horse or pony (gelding, mare or stallion), mule, jack or jenny; $75.00 for each colt under one (1) year; $30.00 for each burro; $75.00 for each ox, bull or steer; $50.00 for each cow; $20.00 for each calf; $15.00 for each hog; $5.00 for each sheep; $3.00
314 for each goat, and in case of injury or partial loss, the amount of damage recoverable shall not exceed the same proportion. In making this contract the undersigned owner, or authorized agent of the owner of the stock named herein, expressly acknowledges that the value of such stock does not exceed the amounts per head above stated, unless a different value is inserted herein by the owner or his authorized agent."

In connection with the use of bills of lading by the plaintiffs containing, in substance, such stipulations expressly or by reference, defendants show that no reduced rate is granted the shipper in consideration of such stipulation, but the rates prescribed in said tariff are charged, which correspond to the maximum rates, in most instances, prescribed by the Interstate Commerce Commission in its orders.

Defendants say that such stipulation, in and of itself, as well as in view of the conditions under which it is used, is void, as being in violation of both the State and Federal laws;

(b) "The shipper shall examine the cars tendered by the carrier before loading, and if he finds them to be unsuitable or in improper condition, he shall refuse to accept them, and shall request, in writing, the carrier to furnish other car or cars. The shipper shall see that all doors and openings are closed and fastened, and keep closed and fastened, in order to prevent injury or escape of the live stock.

The carrier, upon being notified by the shipper of any defect in any car, shall either put it in proper repair, or furnish another, within a reasonable time.

This stipulation undertakes to make the shipper discover defects, etc., in such cars, and to relieve the carrier of liability in case the shipper fails to discover such defects, notwithstanding the fact that such defects, and the use of such defective cars, are due to the negligence of the carrier.

(c) The bills of lading applied, and proposed to be applied by the plaintiffs, under the claim of authority of said order, contain many other stipulations and terms limiting liability, requiring
315 notice of claims for loss or damage, etc., etc., which contravene the laws of the State of Texas and of the United States.

XXI.

Plaintiffs are estopped to take advantage of the matters and things pleaded in subdivisions III, Va, VI, and to claim and receive the relief prayed for in paragraphs "Second," "Third," "Fourth," of subdivision XV of their bill of complaint, for that under and by virtue of certain contracts made between them and the State of Texas, under which the State of Texas parted with, and complainants received, many valuable considerations, and under certain constitutional and statutory provisions of the State of Texas upon which the receipt and retention of the many valuable franchises now, and heretofore, held by complainants, and which were, and are, and will continue to be, conditions in and of their charters, the right of the complainants, and each of them, to retain and enjoy such franchises, and especially the right to charge and collect tolls, freights, and fares upon intrastate traffic transported over their railroads, is subject to the laws of the State of Texas, and such rights depend upon the authority of the State of Texas; and, therefore, to permit the complainants, or any of them, to divest themselves of the right of the State of Texas to regulate and control intrastate rates,—as long at least as such rates are not confiscatory,—would be to permit them to challenge the validity and binding force of the laws of their creation, to retain all the benefits of such laws, and said contracts, and at the same time to deny the burdens attached to the grant of such benefits and rights. In this connection, defendants show unto the court the following:

(I) Section 3 of Article I of the Constitution of Texas provides that no "exclusive separate public emoluments, or privileges," shall be granted "but in consideration of public services."

Section 17 of Article I of said Constitution provides that "no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof."

316 All of the franchises, including the right to construct or acquire and operate railroads in said State and to charge and collect fares and freights for the use thereof, with respect to intrastate

business,—at least,—of the complainants and each of them were granted by the Legislature or under its authority.

Section 1 of Article X of said Constitution grants the valuable right to "any railroad corporation, organized under the law for the purpose," to construct and operate a railroad between any points within the State, and Section 2 of said article declares such railroads to be public highways and such companies common carriers.

Section 1 of Article XII of said Constitution declares that "no private corporation shall be created by general laws," and Section 2 thereof provides that general laws shall be enacted providing for the creation of corporations wherein the Legislature shall "provide fully for the adequate protection of the public."

Section 5 of Article XII of said Constitution provides that "all laws granting the right to demand and collect freights, fares, tolls or wharfage shall at all times be subject to amendment, modification or repeal by the Legislature," and Section 3 of said article provides that "the right to authorize and regulate freights, tolls, wharfage or fares levied and collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, etc., devoted to the public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under legislative control and depend upon legislative authority.

Section 4 of Article XII commands the Legislature to provide a mode of procedure "by the Attorney General and District and county attorneys in the name and behalf of the State to prevent and punish the demanding and receiving or collection of any and all charges, as freights, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law," and Section 22 of Article 4 of said Constitution requires the Attorney General to inquire into the charter rights of private corporations and "from time to time to, in the name of the State, to take such action in the courts as may be proper and necessary to prevent any
317 private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law."

By Section 2 of Article X the Legislature is empowered and commanded to "pass laws to regulate railroad freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable," under which last quoted clause the Legislature has created the Railroad Commission of Texas and vested it with certain powers with respect to freights and rates, etc., to be charged for intrastate transportation, which Commission, pursuant to such powers, has established rates for intrastate freight transportation and the rates complained of herein by complainants.

By Section 3 of Article X of the said Constitution it is provided that "no railroad corporation in existence at the time of the adoption

of this Constitution (in 1876) shall have the benefit of any future legislation, except upon complete acceptance of all the provisions of this Constitution applicable to railroads."

Some of complainant railroad corporations were created prior to the adoption of said Constitution by each and all of such having accepted and received the benefits of legislation enacted since that time, including the exercise of the power of eminent domain, and many other valuable rights and powers, and have thereby become fully subject thereunto. All of the complainant railroad corporations, and the corporations of whose properties the receivers are complainants herein created since the adoption of said Constitution have been created under the General Laws of the State and thereby became subject to said constitutional provisions and the laws enacted thereunder.

Each and all of said constitutional provisions which are not
318 self-executing have been carried into effect by appropriate State legislation.

That under such constitutional provisions each and all of the complainants accepted and retained, and now have and enjoy, the franchise rights granted them by the State, including the right to collect fares and freights for intrastate transportation, and such franchise and rights were accepted and are retained upon the express condition and contract that the Legislature of the State, and its agency, the Railroad Commission of Texas, have, and shall always have, the right and power to regulate and control the amount and conditions of freight and passenger rates, classifications, etc., and the collection thereof, with respect to intrastate transportation, and that no such rates and charges shall ever be made or collected unless the same shall have been specially authorized by the Legislature or its agency, and the right to collect the same depends upon the authority of the Legislature of the State, and its agency, as to the amounts and conditions thereof. But that, notwithstanding the premises, the complainants herein claim the power and right to collect such rates, etc., not in accordance with such State authority, but in defiance of the same, and under the supposed authority of an agency not the Legislature and not acting under the authority of the Legislature, and such right and power defendants say the complainants are estopped to claim or exercise.

(II) The charter of each of the plaintiffs, created prior to 1876, was granted by special acts of the Legislature of Texas and in each of such acts, and acts supplementary thereunto, and by general State laws in force at the time of the granting of such charters,—and subject to which such charters were granted,—the right of the State, through its Legislature, and legislative agencies, to fix, authorize and control the rates,—the amounts and conditions thereof, of intrastate freight and passenger transportation was expressly or impliedly retained as a condition and part of such charters and the rights and franchises granted thereby and by subsequent legislation. Those of the complainants created since 1876, as aforesaid, were chartered under the general corporation laws of the State, and such

charters were granted by the State, accepted by the complainants subject to all general laws then in force governing railroad corporations and especially subject to law expressly and impliedly retaining to the State and its Legislature and legislative agencies the right to govern, control and regulate the amount and conditions of intrastate freight and passenger transportation, and making the right to collect the same depend upon State legislative authority, among such statutory laws enacted in 1876 and continually since in force, and now contained in Article 6543, Revised Statutes, 1911, is the following:

"Such corporations shall have the right to regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject, nevertheless, to the provisions of this or any other law that may hereafter be enacted."

But, notwithstanding the premises, the plaintiffs now, after having accepted and enjoyed, and proposing in the future to retain and enjoy, the many valuable rights and franchises conferred upon them by the State, propose to disavow and divest themselves of the burdens and conditions upon which such rights and franchises were granted and allowed to be retained, and as to intrastate freight and passenger transportation divest themselves of the controlling jurisdiction of the State and to substitute therefor their own volition controlled,—so far as may be,—by the jurisdiction of an agency not the Legislature of Texas, and not created or acting under the authority of the Legislature of Texas,—and this, defendants say, they are estopped to do.

(III) In addition to the matters set forth in paragraphs "(I)" and "(II)" of this subdivision hereof, many of the complainants upon the express and implied condition that their franchises and the right to collect freights and fares for intrastate freight and passenger transportation should depend upon the authority of the Legislature of Texas, and its agencies, as to the amounts and conditions thereof, received from the State of Texas more than 32,000,000 acres of land from the public domain belonging to the State. A list of such lands so granted and received by each of the complainants is contained in Exhibit 4 filed herewith.

Defendants show that the following plaintiffs, towit: Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Galveston, Houston & Henderson Railway Company; Eastern Texas Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Texas & Pacific Railway Company; Texas Mexican Railway Company; Texas Midland Railroad Company; Missouri, Kansas & Texas Railway Company of Texas, and other of plaintiffs, received directly from the State of Texas many acres of such lands, and some or all of them received, indirectly from the State of Texas, through acquisition of the franchises and properties of other railway companies to whom lands had been so granted, many other acres of such lands and the proceeds and benefits thereof, and still have and enjoy the proceeds and benefits of all such lands.

Defendants show unto the court that they can not now allege an accurate and detailed history of the possession, disposition, etc., of

said lands and the proceeds thereof, for the reason that the records thereof are in other States and not accessible to them, but the facts thereof are well known to plaintiffs and they are in a position to furnish the court with such information, and defendants pray that they each and all be required to do so herein.

Defendants do say, however:

(*a*) That much of said lands or the proceeds thereof are now owned, directly or indirectly, by the plaintiffs and are included, in some form in the present real values of their properties;

(*b*) That the proceeds of much of said land which has been sold constitute funds, in the hands of plaintiffs or trustees, out of which the bonds, in whole or part, of the plaintiffs are to be paid, or have been paid;

(*c*) That whatever may have been, or may be, the form or manner or location of the legal title to said lands, and the proceeds thereof, the plaintiffs have been, are, and will continue to be, directly or indirectly, the real beneficiaries thereof;

321 (*d*) That whatever may have been the history of such lands so granted, and whatever form the legal title thereto may have assumed, the value of such lands, and the proceeds thereof, should be held to be represented in and included in the present real values of such land and the properties, and the values of such lands and the proceeds thereof should be deducted from the present real values of plaintiffs' properties in determining the value of the properties upon which plaintiffs are entitled to earn a return from intrastate rates. Such lands when granted were worth many millions of dollars to plaintiffs, and their predecessors in interest, and one of the conditions and considerations for such grants was that the public of Texas, desiring to ship or travel in intrastate movements, should have the advantage of railroad transportation upon reasonable terms and at reasonable rates, and that in order to secure and guarantee the same the State, through its Legislature and legislative agencies, should forever have the right and power to control the amounts and conditions of rates therefor and to have the right to collect therefor upon intrastate traffic always depend upon State authority. This right and power of the State was expressly or impliedly retained in all laws under which such grants were made, and among such laws was and is the following:

Chapter CI, Acts of the Fifteenth Legislature, convened April 12, 1876, provided for grants of sixteen sections of land out of the public domain to railroads for each mile of road constructed and put in running order. The act contained the following provisions: "Provided, that the State shall retain the right to regulate the rates of freight and passenger fare by general law on all roads accepting a grant of land under this act." As stated before, there were other laws in force continually since prior to the incorporation of any and all of the complainant companies.

If it be true that the properties and franchises of some of the companies which received land grants from the State have been sold, nevertheless such assets came into the hands and possession of some

of the complainants charged with all the duties, burdens and
322 restrictions placed upon the original companies and their properties.

Such companies received said lands as aforesaid, and received the benefits thereof and the proceeds of such lands as may have been alienated, and those of plaintiffs who received such lands are still receiving, directly or indirectly, the benefits thereof, and those of the plaintiffs who succeeded to the ownership of the properties of other companies who received such land grants have, in the past, received, do now receive, and will continue to receive, directly or indirectly, the benefits.

But notwithstanding the premises, the complainants, and such of them as received such land grants, or the benefits thereof, as aforesaid, are now seeking to have the conditions, considerations and burdens upon which such grants were made set aside and rendered null and void, without returning, or offering to return, to the State of Texas such lands, or the proceeds and benefits thereof, and the relief prayed by them, if granted, would operate to defeat one of the material considerations and conditions upon which such grants were made by the State by freeing such complainants of the right of the State, through its Legislature and legislative agencies, to authorize and control freight and passenger rates, and the conditions of their application, or intrastate traffic. Defendants say that complainants, because of the premises, are not entitled to such relief and are estopped to sue for and receive the same.

Defendants pray, that each of the plaintiffs which has received, directly or indirectly, any of such lands, or the proceeds or benefits thereof, or whose bonds or other indebtedness has been or will be paid or satisfied, in whole or in part, by such proceeds, directly or indirectly, be required herein to give a complete accounting thereof showing in detail the amount of such lands received by each of them or their predecessors in interest, the amount of such lands still in their possession, the amount of such lands or proceeds in the hands of trustees for their benefit or the benefit of their creditors or stockholders, and all other relevant facts touching the receipt, history, disposition, or present status of said lands, or any of them, and the proceeds thereof.

323 (IV) Wherefore, defendants say: That the order of the Interstate Commerce Commission referred to in, and made a part of, the bill of complaint does not authorize the plaintiffs, or any of them, to set aside, or have set aside, or ignore and refuse to apply the rates prescribed by the Railroad Commission of Texas, and the laws of Texas, with respect to intrastate traffic, and does not authorize them, or any of them, to apply on intrastate traffic any other rates than those so prescribed by State authority, because:

(A) Said order of the Interstate Commerce Commission does not require, or purport to require, the plaintiffs, or any of them, to apply higher, or lower, or different rates to intrastate traffic than those prescribed by State authority, but said order permits them to prescribe and apply such rates to interstate traffic as will have the effect of removing the supposed discrimination dealt with in said order.

(B) If such order of the Interstate Commerce Commission is susceptible of the construction that it requires the complainants, in removing such supposed discrimination, to apply different rates to intrastate traffic than those prescribed by State authority, nevertheless it is also susceptible to the construction that it permits such discrimination to be removed by alteration of interstate rates, and, in view of the premises, precedent and subsequent, in this subdivision set forth, such order ought to be given the latter construction and for such relief defendants pray.

(C) If such order of the Interstate Commerce Commission is susceptible of the construction that it requires the complainants, or any of them, to apply rates on any part of their intrastate traffic different from the rates so prescribed by State authority, and such should be held to be the correct construction thereof, then such order should be construed to mean that such different rates are to be applied only where, and when, the application of the rates prescribed by State authority would operate to produce an actual discrimination in fact against the locality or shippers of Shreveport and should be
324 construed not to apply when and where and under conditions where no actual discrimination in fact does or would result, and for such alternative relief defendants pray.

(D) If said order of the Interstate Commerce Commission has the effect, and was meant to have the effect, claimed for it by complainants herein, or was meant to have, or has, any effect other than as described in sub-paragraphs "A," "B" and "C" last above, then the same is to such extent void and of no binding force, and entitled complainants to no relief herein, for that:

(*a*) Congress has not conferred upon the Interstate Commerce Commission authority to that extent to impair, nullify, and set aside said State laws and contracts and the obligations thereof.

(*b*) Congress has not attempted to confer upon said Commission to base such an order upon purely hypothetical, theoretical and imaginary discrimination, and said order is void to the extent that it goes beyond actual discriminatory conditions.

(*c*) If it be held that Congress has attempted to confer such authority upon such Commission, then such delegation of authority is void.

325 XXII.

Defendants say that each and all of the plaintiffs, and their predecessors in interest, received from individuals, counties, towns and communities large sums of money as donations, and large amounts of lands as donations, which sums and lands, and the proceeds thereof were used, or should have been used in the construction and equipments of said roads, and are, therefore, represented, and should be held to be included in the present real values of their properties, and the amounts thereof should be deducted from the present real values of such properties in estimating the values upon which plaintiffs are entitled to *each* returns, and for such relief defendants pray.

XXIII.

Defendants, reiterating their allegation that the rates, etc., complained of by the plaintiffs are not unreasonably low, say that the failure of the plaintiffs, or any of them, to receive a fair and just return upon their investments, etc., if such failure there has been alleged, which is not admitted, but is denied, is not due to the existence and application of the rates, etc., complained of, but is due to other causes not attributable to the laws of Texas, or the orders, etc., of the Railroad Commission of Texas, among such other causes being the following:

(1.)

Such failure is due, to a substantial extent, to the failure of the plaintiffs to receive a due, proper, or just revenue out of their interstate traffic, freight and passenger. Defendants do not allege that interstate rates, etc., applied by complainants are unreasonably low or non-compensatory in themselves, but they do say that complainants have not received, do not receive, and probably will continue not to receive for such service the full proportion of the total revenues derived from such interstate traffic which they should properly and justly receive, by reason of unfair divisions, and other causes now unknown to defendants, and that one reason for the receipt of such undue and inadequate proportions of such revenue is due, in part at least, to the domination and control of the principal, if not all, of the complainants by "parent corporations" which have the
328 ability to control, and do control, through their control of plaintiffs, the routing of such traffic, the divisions thereof, and other matters.

And in this connection, defendants show unto the court the following:

1. That fifty per cent, or more, of the values of the properties of the plaintiffs, and each of them, is used in and devoted to their interstate traffic.

2. That it costs the plaintiffs, and each of them, approximately as much per ton, and per ton per mile, and per passenger, and per passenger mile, to handle their interstate traffic as it does to handle their intrastate traffic.

3. That for the seven years of 1909 to 1915, inclusive, as representative of modern traffic conditions in Texas, all of the railroads of Texas handled:

(a) Sixty-seven million six hundred thirty-three thousand, six hundred fifty-three (67,633,653) tons of intrastate one-line freight, an average distance of 86.09 miles per ton, or a total distance of 5,874,380,810 ton miles, and received therefor $119,219,786, or an average revenue per ton per mile of 1.911 cents.

(b) Eighty-five million thirty-six thousand, one hundred forty-three (85,036,143) tons of "interline-intrastate" freight an average distance of 121.52 miles per ton, or a total distance of 10,311,713,1[illegible]

ton miles, and received therefor $114,142,492, or an average per ton per mile of 1.109 cents.

(*c*) Therefore, a total of 152,669,796 tons of intrastate freight, an average distance of 106 miles per ton, or a total distance of 16,186,-993,996 ton miles, and received therefor a total revenue, freight strictly, of $226,362,278, or an average revenue per ton of 1.398 cents.

(*d*) One hundred ninety-seven million one hundred ninety-three thousand and ninety-one (197,193,091) tons of interstate freight an average distance of 153.01 miles per ton, or a total distance of 30,-183,509,384 ton miles, and received therefor a total revenue of $259,-499,683, or an average revenue per ton mile of .862 cents.

(The facts stated in paragraphs "(*a*)," "(*b*)," "(*c*)," and "(*d*)" hereof, and the details thereof as to each and all of complainants, are shown in Exhibit No. 26 filed herewith.)

327 (*e*) One hundred seventeen million seven hundred fifty-six thousand four hundred eighty-eight (117,756,488) one line intrastate passengers, an average distance of 40.05 miles, or a total distance of 4,700,055,362 miles, and received a total revenue therefor of $118,871,830, or an average per passenger mile of 2.515 cents.

(*f*) Nine million seven hundred sixty-one thousand six hundred and six (9,761,606) "interline" intrastate passengers, an average distance of 89.85 miles per passenger, or a total distance of 876,726,-375 passenger miles, and received total revenue therefor of $19,433,-357, or an average per passenger mile of 2.213 cents.

(*g*) Or (combining "(*e*)" and "(*f*)" above) they carried intrastate passengers a total of 5,576,781,607 miles and received total revenue therefor (137,710,187), or an average per passenger mile of 2.460 cents.

(*h*) Seventeen million nine hundred fifty-five thousand six hundred eighty-two (17,955,682) interstate passengers an average distance of 118.61 miles per passenger, or a total distance of 2,129,951,-157 passenger miles, and received a total revenue therefor of $42,-800,282, or an average of 2.105 cents per passenger mile.

(The facts stated in "(*e*)," "(*f*)," "(*g*)," and "(*h*)," supra, and the details thereof as to each of the complainants, appear in Exhibit No. 25 filed herewith.)

And, therefore:

(*i*) The relation of freight revenue per ton mile, derived from intrastate business, as compared with interstate business, is as 1.623 is to 1.000, and the relation of passenger revenue per passenger mile is derived from intrastate business, as compared with interstate business, is as 1.223 is to 1.000.

(*j*) Of the total service performed in hauling the total of State and interstate freight the total of 48,319,603,380 ton miles, only 37.1 per cent thereof was for intrastate freight; while of the total revenue derived from State and interstate freight (485,861,914), 46.3 per cent was for State and 53.7 per cent was from interstate passengers.

(*k*) In addition to the revenues derived from intrastate traffic,

as described above, plaintiffs, and each of the-, annually de-
328 rive many thousands of dollars per annum from special service of different kinds, which revenues arise wholly, or almost wholly, from intrastate commerce. Defendants cannot now accurately allege the amounts thereof, but the same will be made to appear upon hearing hereof.

XXIV.

Defendants say that plaintiffs have no right to have the rates, tariffs, etc., complained of set aside and are estopped to attack the same, upon the ground that the existence and enforcement of such rates, tariffs, etc., deprives them of the right and power to earn and receive a fair return upon their investment, because under the said rates, tariffs, etc., and under the laws of the State, the plaintiffs have, and have had for many years past, the lawful right to make sufficient charges to yield such returns, and, instead of exercising such rights, the plaintiffs have, voluntarily, and without any compulsion of law, reduced the rates upon a large portion of their intrastate traffic, and have voluntarily applied such reduced rates to such an extent as to deprive themselves, voluntarily, of many millions of dollars per year in aggregate revenues; and if it be true,—which is not admitted, but denied,—that plaintiffs have not in fact received adequate returns, such inadequacy of returns has been, and is, and will continue to be, due to such voluntary reduction of rates. And in this defendants show unto the court the following:

(A.)

(1) That what is now Article 6618, Revised (Civil) Statutes of Texas, 1911, is now in force, and has been in force in Texas continually since 1883, such statute reading as follows:

"The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents; provided further, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile; provided further, railroads shall be required to keep their ticket of-
329 fices open half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile."

(2) That by subdivision 11 of Article 6654, Revised Statutes, 1911, which has been continually in force in Texas since 1891, the Railroad Commission of Texas is empowered to "make and establish reasonable rates for the transportation of passengers over each of the railroads" subject to its jurisdiction, including each and all of the plaintiffs, and with respect to intrastate passenger transportation.

But that, notwithstanding such power and jurisdiction vested in

said Commission, it has never exercised such power to reduce such passenger rates.

(3) That by reason of the existence of the aforesaid statutory provisions and the said failure of the Railroad Commission of Texas to exercise the power to reduce such rates, each and all of the railroads of Texas, including the plaintiffs, and each of them, has had the lawful right and power to charge three cents per mile for intrastate passenger transportation, but of this right they have not availed themselves to the extent and with the result hereinafter described.

(4) The statistics in this paragraph given cover the years ending June 30, 1909, 1910, 1911, 1912, 1913, 1914, 1915.

During said years all of the railroads doing an intrastate passenger business in Texas carried 117,756,480 "one-line," revenue, intrastate, for an average distance of 40.05 miles per passenger, *passenger* or for a total of 4,700,055,362 miles at an average rate of 2.515 cents per mile, and received a total revenue therefrom of $118,271,830; they carried during said period 9,761,606 "interline," revenue, intrastate passengers an average distance of 89.95 miles, or a total of 876,726,335 miles, at an average rate of 2.213 cents per mile, and received a total revenue therefrom of $19,438,357; or, stated in the aggregate, they carried intrastate passengers a total of 5,576,781,697 miles at an average rate of 2.469 cents per mile and received revenue therefor amounting to $137,710,187.

Now, under said laws of the State of Texas, the plaintiffs had the absolute right to charge three cents for each and every of such miles of transportation, and if they had done so they would have received a revenue of $167,303,450.91, or $29,593,263.91 more than
330 they did receive, being an average of $4,227,609.13 per year more than they did receive.

During the same period the carriers who are plaintiffs herein carried intrastate passengers to a proportionate extent and at a similar rate and with similar results as shown by Exhibit No. 25, filed herewith.

If all the railroads doing an intrastate passenger business in Texas had charged said three-cent statutory rate, instead of the arbitrary rate of 2.409 cents, and, thus had received said average additional revenue therefrom of $4,227,609.13, such additional revenue would have amounted, annually, to .0067 per cent of the total amount of their capital stock (par value), bonds, equipment, trust obligations, "current and other liabilities," amounting in the aggregate to the sum of $626,795,665, and would have amounted to at least .0134 per cent on the total valuation of their properties as made by the Railroad Commission to June 30, 1915.

(5) In addition to said intrastate, passenger transportation, all the railroads doing business in Texas during said seven-year period carried 17,955,682 "intrastate revenue passengers" an average distance of 118.61 miles, or a total of 2,129,951,157 miles in Texas, at an average rate per mile of 2.0105 cents,—which low rate was voluntarily, and without compulsion of law, so applied,—and received therefor a total of $42,800,282.

(6) That the total revenues derived by all of the railroads of

Texas from intrastate passenger transportation, at said reduced r
during said period, was, as aforesaid, the sum of $137,710,187;
ing the same period the total revenues derived directly from i
state freight traffic was the sum of $226,382,278, from inter
freight traffic the sum of $250,499,683, and from all freight o
tion was the sum of $495,585,562.

So that it appears that the portion of said railroads' intra
freight traffic upon which they have so voluntarily reduced rates,
the results stated above, amounts to a little more than 37 per ce
their total intrastate traffic, freight and passenger, calculated upo
basis of the gross revenues derived therefrom, and that upon sai
per cent of their total intrastate traffic they had voluntarily red
the rates which they might have charged by 17.7 per
thereof.

331 (7) Defendants do not know, and cannot allege
curately, the cost to the railroad of handling their pass
business as a whole, or with respect alone to the intrastate po
thereof, but does allege that the same is more expensive to them
unit of revenue than their contemporaneous freight traffic.

(B.)

In addition to the voluntary reductions of passenger fares as s
in paragraph XXIIIa above, defendants show unto the court
throughout their history the railroads of Texas have voluntarily
sipated their revenues and the proper sources thereof by gratuit
giving away every year many millions of dollars revenue, an
opportunity to receive the same, in the form of free passes to fa
passengers, the extent of which on the part of all such railroads
on the part of each of them, including the plaintiffs, is shown, in
by Exhibit No. 25 filed herewith covering the period of years from
to 1914, inclusive. In this connection, however, defendants
that during said ten-year period all of the railroads of Texas
carried intrastate "free passengers a total of 1,245,498,534 mi
an average annual mileage of 124,549,853, which mileage, if ch
for *for* at the average rate intrastate passenger transportation of
cents per mile for said ten-year period would have produce
total sum of $30,650,472.60, or the average yearly sum of $3
047.30, or, if charged for at the statutory three-cent rate said m
for the ten-year period would have produced the sum of $37,34
or the average yearly sum of $3,734,495. Defendants also sho
the amount of free mileage so given away, notwithstanding sta
restrictions thereon imposed by law since 1907, has increased y
year so that the amount of free mileage given away for the yea
was nearly 60 per cent more than it was for the year 1905.

There was and is no provision of law whereby any railway
pany in Texas is required to give free passes or transportat
anybody.

332 Said sum of $30,650,472.60 (the value of said free m
at 2.469 cents per mile) amounts to 4.8 per cent of the
amount of stocks, bonds, equipment, trust obligations, and o

and other obligations of said railroads, or an average yearly percentage thereof of 48 per cent; said sum of $37,364,956.12 (the value of said free mileage at the statutory rate of three cents per mile) amounts to 5.9 per cent of the total amount of said obligations, or an average yearly percentage thereof of 59 per cent. Said sum of $20,550,473 amounts to 7.4 per cent of the total valuation of said railroads as made by the Railroad Commission of Texas, or an average yearly percentage thereof of 74 per cent; and said sum of $37,364,956.12 amounts to 9.3 per cent of said valuation, or an average yearly percentage thereof of 93 per cent.

The total free mileage for said ten-year period equals 11.215 per cent of the total passenger transportation in Texas, State and interstate, and the free mileage for the year 1914 equals 11.51 per cent of the total passenger transportation in Texas, State and interstate.

Defendants say that the mere service of transportation per passenger mile costs the carrier as much for the free passenger as it does for the pay passenger; that the liabilities of the carriers to the free and pay passengers are substantially the same, and the free passengers are liable to personal injury, and receive such injuries, and the carriers are required to pay therefor, to the same extent, in proportion to numbers, as the pay passengers; and that by reason of the Texas statutes which requires special records to be kept by the carriers for free mileage the carriers incur more expense, in bookkeeping, etc., per passenger, for the free passengers than it does for the pay passengers.

The railroads of Texas also carry annually many hundreds of tons of baggage and freight for the passengers to whom they issue free passes, and for other favored persons, the extent of which defendants cannot now allege more specifically, but which will be made to appear upon hearing hereof.

(C.)

Defendants say that each and all of the plaintiffs have, during each of the years of its history, dissipated their revenues, net and gross, and have thereby to a substantial extent voluntarily deprived themselves of revenue which they otherwise would have received and retained, and which would have added materially to the actual returns which they have received from their properties and business, and which dissipated revenues must be accounted for herein.

While defendants can not now specifically allege the nature and extent of such dissipations, further than is done herein, the same are well known to plaintiffs, and each of them, and defendants pray that they be required to produce their records showing completely and in detail the disposition of their revenues.

XXV.

The United States and the Interstate Commerce Commission Are Proper, and May Be Necessary, Parties to This Cause, and Venue Therefor Properly Lies Within the Western District of Texas.

This court, defendants say, has jurisdiction and venue over the United States and the Interstate Commerce Commission, heretofore made parties defendant herein, and this court should retain jurisdiction and venue thereover, and such parties should be retained herein for the following reasons, towit:

(I) By reason of all the premises hereinbefore alleged, and by reason of the fact that plaintiffs' alleged cause of action is predicated, in large part, upon an order made by the Interstate Commerce Commission, which order is so general and indefinite as to require a construction thereof herein, if not a construction which will materially limit the same the United States (and the Interstate Commerce Commission) are proper parties to this cause.

(II) In the event the court should hold that the matters alleged herein by these defendants constitute such an attack upon the order of the Interstate Commerce Commission as is controlled by the terms of the act of Congress, approved October 22, 1913, entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen, and for other purposes," then, in that event, the United States (and the Interstate Commerce Commission) are necessary parties.

334 (III) Said act of Congress (above referred to) provides that the venue "of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein":

(1) "is the residence of the party or any of the parties upon whose petition the order was made"; (2nd) "Except that where the order * * * is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises"; (3rd) "Except" (also) "where the order does not relate * * * to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office." Now, in this connection, these defendants say:

(A) That since the plaintiffs' cause of action as alleged in this cause primarily, or at least to a large extent, is because of and depends alone upon the order of the Interstate Commerce Commission, and since all o said order, or at least all of it except paragraphs XI and XII thereof, can lawfully be complied with by plaintiffs herein, if they so desire, without suspending or otherwise violating the Texas intrastate rates, rules and laws applicable, this suit was brought, and is being maintained, by plaintiffs "to enforce" such order and the rights which plaintiffs claim flow therefrom, and, therefore, if, under said act of Congress, this court hath not juris-

diction and venue over the United States (or the Interstate Commerce Commission) with respect to the matters pleaded by these defendants, then under said act it hath not jurisdiction or venue over these defendants, or the subject matter with respect to the matters alleged by plaintiffs herein, and in the event the court should hold that it has no jurisdiction or venue over the United States (or the Interstate Commerce Commission) with respect to the allegations made by these defendants then it has no jurisdiction or venue over these defendants or the subject-matter of the bill of complaint, and prays, in that event, that the court dismiss the bill of *of* complaint, and deny all other relief prayed by plaintiff.

335 (B) These defendants say that said order of the Interstate Commerce Commission was, in large and material parts, made,

(1) Upon the petition, application, or prayer of some or all of the plaintiffs herein, irrespective of the form or name of such petition, application, or prayer, the residence, or principal place of business, of which plaintiffs were and are within the Western District of Texas, and among such petitioning plaintiffs are: San Antonio & Aransas Pass Railway Company, A. R. Ponder, Receiver of the San Antonio, Uvalde & Gulf Railway Company, each of whose residences and principal places of business is within the Western District of Texas.

In this connection it is shown unto the court that if said order means what plaintiffs claim for it, and if, by reason of such order, plaintiffs are entitled to any relief herein, then, as shown by the bill of complaint, and as will be further shown upon the hearing hereof, said order operates to increase the revenues of the plaintiffs many millions of dollars annually upon Texas intrastate traffic, of which increased revenues the plaintiffs whose residences are within the Western District of Texas have received, and will receive, substantial portions.

It is shown further that some of the plaintiffs including * * * The San Antonio & Aransas Pass Railway Company, voluntarily, made themselves parties * * * to the causes before the Interstate Commerce Commission, and substantially became petitioners therein.

It is further shown that paragraphs XI and XII of said order were not made upon the petition of the Railroad Commission of Louisiana for said petitioner and did not pray that the carriers be required to desist from the use of the Texas classification or that they be required to use the "current Western Classification in effect at the time such traffic moves," but simply prayed that the carriers not be permitted to use classifications materially differing in their provisions for inter and intrastate traffic. These defendants, therefore, allege that paragraphs XI and XII of said order were made upon the petition, application or prayer of the plaintiff, or some of whose residences were within the Western District of Texas, irrespective of the form or name of such petition, appli-

cation or prayer, or was made by the Commission upon its own motion and without a petition.

386 "It is also here shown to the court that the matters involved in said causes, and the various petitions therein and in said order, arose, in whole or in large part, in and throughout the Western District of Texas.

"As aforesaid, said order, in each and every material respect, as construed by plaintiffs in their bill herein, grants to plaintiffs and each of them substantial relief, and defendants allege that each of such portions, in whole or part were made, directly or indirectly, upon the petition, regardless of the form or name thereof, of the plaintiffs, as will appear from the record, and as will be made more fully to appear upon the hearing hereof, and in this connection defendants say that the plaintiffs are in possession of true copies of such pleadings as they, respectively, filed in said causes, and of letters, telegrams and other communications which were, in part, taken as pleadings, and they are hereby notified to produce upon the hearing hereof:

"(a) The originals or copies of all pleadings filed by them at any time in any of said causes; (b) the originals, or copies, of all correspondence, letters, telegrams, etc., passing between them, or any of them, or any of their officers, agents, or attorneys and the Interstate Commerce Commission, or any member, officer, agent or examiner thereof in any way pertaining to any of said causes; and (c) the originals, or true copies, of all correspondence, letters, telegrams, or other written communications or documents, passing between them, or any of them, and one George T. Atkins, Jr., since January 1st, 1910.

"(2) Large and material portions of said order were not made upon the petition of any party to said causes,—unless upon the petitions of the carriers parties thereto, as above alleged,—and the matters in such portions involved, as well as the matters in such petitions as were before the Commission arose, and now arise in and throughout the Western District of Texas.

"And, in this connection, it is alleged, as before, that the principal offices and principal operating offices of many of the plaintiffs 'petitioners in court,' herein are located within the Western District of Texas, and also, that the principal office of those defendants, likewise 'petitioners in court' herein with respect to the matters and prayers set forth in this answer, is within the West-

387 ern District of Texas.

"In this connection, also, it is shown that rates and classification provisions are dealt with, and attempted to be prescribed, in said order with respect to many articles and commodities of inter and intrastate traffic, which articles and commodities, rates and classification provisions were not involved in or complained of, in any petition before the Interstate Commerce Commission,—unless, as aforesaid, the same were involved in petitions, irrespective of form or name,—of some or all of the plaintiffs herein, including the plaintiffs whose residences are within the Western District of Texas, all of which will appear from the records of said causes before

the Interstate Commerce Commission, and which will be made more fully to appear upon hearing hereof.

"(3) Large and material portions of said order were made upon petitions,—irrespective of form or name,—of various persons, chambers of commerce and other similar bodies, whose residences, or principal offices were and are within the Western District of Texas, as will more fully appear from the records in said causes and upon the hearing hereof.

"In this connection it is shown that among others whose residences are within the 'Western District of Texas' were the following intervenors, complainants and petitioners in some or all of the causes consolidated for the purpose of making the order in question, towit: U. S. Pawkett, Jobbers and Manufacturers' League, Manufacturers' Club, and San Antonio Freight Bureau, whose residences and principal offices were and are at San Antonio, Bexar County, Texas; and Waco Chamber of Commerce, whose residence and principal office was and is at Waco, McLennan County, Texas.

"It was upon the petition of such, and other such petitioners that the tariffs filed by plaintiffs and other carriers to become effective September 1, 1915, and other such tariffs to become effective October 15, 1915, were suspended, and it was upon the petitions of such parties that Investigation and Suspension Docket No. 710 and Investigation and Suspension Docket No. 729, arose, which causes (Nos. 3918, 8290 and 8418) and all became one cause, and with respect to which consolidated cause the order here involved was issued, and specifically it was upon the petitions of such and other parties that paragraphs I and II of said order were
338 made. Other portions of said order were made, in part at least, upon and in connection with the petitions of such parties.

"(C) Defendants say that the matters covered by the parts of the order made, in whole or part, upon the petitions of the various parties, and without any petition, as described in sub-paragraphs '(B),' next above, are so inseparably mingled with and related to each other and to the whole of said order as to make it impossible for the court to consider the same separately and apart, and that, therefore, the whole of such order must be treated as having been made upon a petition of each and all of such parties.

"(IV) The matters alleged as defenses by these defendants are inseparably connected with the cause of action alleged by plaintiffs and with said order to such an extent as that this court under the general principles and usages of equity, and law, now has jurisdiction over the United States (and the Interstate Commerce Commission) as proper parties to this cause.

"(V) Wherefore, by reason of each and all of the things in this answer shown, these defendants pray that this court retain jurisdiction over the United States (and the Interstate Commerce Commission), and retain them as parties defendant herein.

XXVI.

"The Railroad Commissioners and Railroad Commission and Attorney General of Texas, defendants herein, are parties to cause Nos. 710, 729, 8290, 8418 before the Interstate Commerce Commission, and by reason thereof, and for various other reasons, they have such an interest in the subject matter of the order involved herein as to enable them to make and maintain the allegations made herein with respect to said order and to make and maintain all of the defenses urged herein to the cause of action presented by plaintiffs.

XXVII.

"Wherefore, by reason of the premises, defendants pray that plaintiffs be denied all relief herein, that this cause be dismissed, and that defendants have judgment for their costs, and all such other relief to which they may be entitled.

339 XXVIII.

"Defendants pray that upon final hearing hereof said order of the Interstate Commerce Commission be annulled and set aside in whole.

"And, in the alternative, they pray that said order be given the construction contended for it in this answer, and that the same be limited thereto, and the remainder of said order be set aside and annulled.

RAILROAD COMMISSION OF TEXAS,
By B. F. LOONEY, *Attorney General;*
LUTHER NICKELS,
Assistant Attorney General,
By B. F. LOONEY,
Attorney General, per se;
LUTHER NICKELS,
Assistant Attorney General;
WADEL-CONNALLY HARDWARE COMPANY, *Defendant,*
By B. F. LOONEY, *Attorney General;*
LUTHER NICKELS,
Assistant Attorney General,
Attorneys for said Defendants.

The following Exhibits, attached to foregoing Answers, were read in evidence, to wit:

340 EXHIBIT No. I.

Comparison of Following Class Rates: (1) Those complained — by Shreveport in original cause 23 I. C. C., shown in first line below for various distances; (2) those prescribed as reasonable in first de-

cision 23 I. C. C. for H. E. & W. T. shown in second lines for various distances; (3) those prescribed in supplemental decision 34 I. C. C. shown on third line for various distances, and (4) those prescribed in last decision, 43 I. C. C., for various distances shown in last line.

Line.	Miles.	1	2	3	4	5	A	B	C	D	E
(1)	42.8	40	28	24	24	24	24	23	17	14	9
(2)		25	23	21	19	17	18	15	12	10	8
(3)		25	23	21	19	17	18	15	12	10	8
(4)		37	31	26	22	18	19	15	13	11	9
(1)	54.3	51	42	34	31	26	28	24	21	19	15
(2)		29	27	25	23	19	20	17	14	12	9
(3)		29	27	25	23	19	20	17	14	12	9
(4)		40	34	38	24	20	21	16	14	12	10
(1)	63.9	52	43	35	33	27	29	25	22	20	15
(2)		32	29	27	25	20	21	18	15	13	10
(3)		32	29	27	25	20	21	18	15	13	10
(4)		43	37	30	26	21	22	17	15	13	11
(1)	72.3	56	47	39	36	30	32	28	24	21	15
(2)		35	32	30	28	22	23	20	17	14	11
(3)		35	32	30	28	22	23	20	17	14	11
(4)		47	40	33	28	23	24	19	16	14	12
(1)	83.3	61	52	43	39	34	36	32	25	21	15
(2)		38	35	33	30	23	24	21	18	14	11
(3)		38	35	33	30	23	24	21	18	14	11
(4)		50	43	35	30	25	26	20	18	15	12
(1)	93.4	66	57	48	43	38	41	36	25	21	15
(2)		41	38	35	32	25	26	23	20	16	13
(3)		41	38	35	32	25	26	23	20	16	13
(4)		53	45	37	32	27	28	21	19	16	13
(1)	112.5	69	59	50	47	40	44	37	29	22	15
(2)		48	45	41	39	28	29	26	23	17	14
(3)		48	45	41	39	28	29	26	23	17	14
(4)		60	51	42	36	30	31	24	21	18	15
(1)	137.7	77	67	54	52	42	45	39	31	22	18
(2)		55	51	46	44	32	33	30	26	19	16
(3)		55	51	46	44	32	33	30	26	19	16
(4)		67	57	47	40	33	35	27	23	20	17
(1)	148.2	82	71	54	52	42	45	39	31	22	18
(2)		56	52	47	45	32	33	30	26	19	16
(3)		56	52	47	45	32	33	30	26	19	16
(4)		70	60	49	42	35	36	28	25	21	18

Line.	Miles.	1	2	3	4	5	A	B	C	D	E
(1)	151	84	71	54	52	42	45	39	31	22	18
(2)		58	54	49	47	33	34	31	27	19	16
(3)		58	54	49	47	33	34	31	27	19	16
(4)		75	65	53	45	38	39	30	26	22	19
(1)	159.2	85	71	54	52	42	45	39	31	22	18
(2)		60	56	51	49	34	35	32	28	20	16
(3)		60	56	51	49	34	35	32	28	20	16
(4)		75	64	53	45	38	39	30	26	22	19
(1)	167.3	85	71	54	52	42	45	39	31	22	18
(2)		62	57	51	49	35	36	33	28	20	16
(3)		62	57	51	49	35	36	33	28	20	16
(4)		75	64	53	45	38	39	30	26	22	19
(1)	175.4	85	71	54	52	42	45	39	31	22	18
(2)		64	59	53	51	36	37	34	29	21	16
(3)		64	59	53	51	36	37	34	29	21	16
(4)		80	68	56	48	40	42	32	28	24	20
(1)	187.5	85	71	54	52	42	45	39	31	22	18
(2)		67	62	56	54	38	39	36	30	21	16
(3)		67	62	56	54	38	39	36	30	21	16
(4)		80	68	56	48	40	42	32	28	24	20
341											
(1)	194.2	85	71	54	52	42	45	39	31	22	18
(2)		69	64	58	56	39	40	37	31	22	17
(3)		69	64	58	56	39	40	37	31	22	17
(4)		80	68	56	48	40	42	32	28	24	20
(1)	206.4	85	71	54	52	42	45	39	31	22	18
(2)		71	65	58	56	40	41	37	31	22	17
(3)		71	65	58	56	40	41	37	31	22	17
(4)		85	72	59	51	43	44	34	30	26	21
(1)	213.6	85	71	54	52	42	45	39	31	22	18
(2)		73	67	59	57	41	42	38	32	22	17
(3)		73	67	59	57	41	42	38	32	22	17
(4)		85	72	59	51	43	44	34	30	26	21
(1)	232.7	85	71	54	52	42	45	39	31	22	18
(2)		77	70	60	58	43	44	39	33	23	17
(3)		77	70	60	58	43	44	39	33	23	17
(4)		90	77	63	54	45	47	36	32	27	21

342 EXHIBIT No. II.

Comparison of Class Rates shown: (1) First line each group, that originally complained — by Shreveport, various distances; (2)

second line each group, those prescribed in first decision for T. & P. various distances; (3) third line each group, those prescribed in supplemental decision, various distances; and (4) fourth line each group, those prescribed in last decision, various distances:

Line.	Miles.	1	2	3	4	5	A	B	C	D	E
(1)	23.4	30	27	23	23	23	23	22	17	13	9
(2)		18	16	14	12	10	11	9	7	6	5
(3)		18	16	14	12	10	11	9	7	6	5
(4)		30	25	21	18	14	16	12	10	9	7
(1)	34.8	43	30	26	26	26	26	24	18	14	9
(2)		22	20	18	16	14	15	13	10	8	7
(3)		22	20	18	16	14	15	13	10	8	7
(4)		33	28	23	20	16	17	13	11	10	8
(1)	42.5	56	42	35	33	30	33	30	23	19	13
(2)		24	22	20	18	16	15	14	11	9	7
(3)		25	23	21	19	17	18	15	12	10	8
(4)		37	31	21	22	18	19	15	13	11	9
(1)	56.7	60	48	40	35	30	35	30	25	21	15
(2)		29	27	25	23	19	20	17	14	12	9
(3)		29	27	25	23	19	20	17	14	12	9
(4)		40	34	28	24	20	21	16	14	12	10
(1)	66.4	60	49	40	35	30	35	30	25	21	17
(2)		32	29	27	25	20	21	18	15	13	10
(3)		33	30	28	26	21	22	19	16	13	10
(4)		43	37	30	26	21	22	17	15	13	11
(1)	78.9	85	71	59	50	43	50	45	36	25	18
(2)		37	34	32	30	23	24	21	18	14	11
(3)		37	34	32	30	23	24	21	18	14	11
(4)		47	40	44	28	25	24	19	16	14	12
(1)	89.0	85	71	64	50	43	50	46	36	25	18
(2)		40	37	35	32	24	25	22	19	15	12
(3)		40	37	35	32	24	25	22	19	15	12
(4)		50	43	35	30	25	26	20	18	15	12
(1)	101.1	95	81	67	55	49	53	46	36	25	18
(2)		44	41	38	35	26	27	24	21	16	13
(3)		44	41	38	35	26	27	24	21	16	13
(4)		57	48	40	34	29	30	23	20	17	14
(1)	112.2	79	64	56	55	47	48	44	36	25	18
(2)		46	45	41	39	28	29	26	23	17	14
(3)		46	45	41	39	28	29	26	23	17	14
(4)		60	51	42	36	30	31	24	21	18	15

(1)	125.3	98	84	67	60	49	53	46	36	25
(2)		52	48	44	42	30	31	28	25	18
(3)		52	48	44	42	30	31	28	25	18
(4)		63	54	44	39	31	33	25	22	19
(1)	135.8	98	84	67	60	49	53	46	36	25
(2)		54	50	45	43	31	32	29	26	19
(3)		54	50	45	43	31	32	29	26	19
(4)		67	57	47	40	33	35	27	23	20
(1)	152.1	105	92	74	71	54	58	51	40	28
(2)		58	54	49	47	33	34	31	27	19
(3)		59	55	50	48	34	35	32	27	20
(4)		75	64	53	45	38	39	30	26	22
(1)	158.6	105	92	74	71	54	58	51	40	28
(2)		60	56	51	49	34	35	32	28	20
(3)		60	56	51	49	34	35	32	28	20
(4)		75	64	53	45	38	39	30	26	22
(1)	171.0	105	92	74	71	54	58	51	40	28
(2)		63	58	52	50	36	38	32	28	20
(3)		63	58	52	50	36	38	32	28	20
(4)		75	64	53	45	38	39	30	26	22

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(1)	183.02	105	92	74	71	54	58	51	40	28
(2)		66	61	55	53	37	38	35	30	21
(3)		66	61	55	53	37	28	35	30	21
(4)		80	68	56	48	40	42	43	28	24

Exhibit No. III.

Comparison of Class Rates: (1) Rates in effect on M. K. & T. time of original decision shown in first line, for various distanc (2) rates put in effect by M. K. & T., Greenville east, shown in s ond line for various distances, after original decision; (3) rates p scribed in supplemental decision, shown in third line, for various tances, and (4) rates prescribed in last decision shown in fourth li for various distances:

Line.	Miles.	1	2	3	4	5	A	B	C	D
(1)	30.4	40	28	24	24	24	24	23	17	14
(2)		31	28	24	20	16	18	15	12	11
(3)		21	19	17	15	13	14	12	10	8
(4)		33	28	28	20	16	17	13	11	10
(1)	40.0	50	30	33	29	26	29	26	22	17
(2)		35	31	27	23	19	21	17	13	12
(3)		24	22	20	18	16	17	14	11	9
(4)		33	28	23	20	16	17	13	11	10

Line.	Miles.	1	2	3	4	5	A	B	C	D	E
(1)	47.7	56	42	35	30	30	30	30	23	19	13
(2)		38	34	30	26	22	24	20	16	13	11
(3)		26	24	22	20	17	18	15	12	10	8
(4)		37	31	26	22	18	19	15	13	11	9
(1)	56.4	61	47	40	39	37	38	36	27	21	16
(2)		40	36	32	29	24	27	22	17	14	12
(3)		29	27	25	23	19	20	17	14	12	9
(4)		40	34	28	24	20	21	16	14	12	10
(1)	66.1	64	51	44	42	39	41	37	29	23	17
(2)		44	40	36	32	27	29	24	19	16	13
(3)		33	30	28	26	21	22	19	16	13	10
(4)		43	37	30	26	21	22	17	15	13	11
(1)	75.0	67	54	47	45	42	43	39	31	25	18
(2)		47	43	39	35	29	31	26	21	18	14
(3)		35	32	30	28	22	23	20	17	14	11
(4)		47	40	33	28	23	24	19	16	14	12
(1)	87.2	69	55	48	46	44	45	41	33	25	18
(2)		51	46	42	38	31	33	28	23	19	15
(3)		40	37	35	32	24	25	22	19	15	12
(4)		50	43	35	30	25	26	20	18	15	12
(1)	97.0	74	60	53	52	45	46	42	34	25	18
(2)		54	49	45	41	32	34	29	24	20	16
(3)		43	40	37	34	26	27	24	21	16	13
(4)		53	45	37	32	27	28	21	19	16	13
(1)	106.2	78	63	56	54	47	48	44	36	25	18
(2)		57	52	48	43	34	36	31	26	21	17
(3)		46	43	40	37	27	28	25	22	17	14
(4)		57	48	40	34	29	30	23	20	17	14
(1)	116.4	81	66	58	56	48	49	45	36	25	18
(2)		60	55	50	45	35	37	32	27	22	18
(3)		49	46	42	40	29	30	27	24	18	15
(4)		60	51	42	36	30	31	24	21	18	15
(1)	129.6	86	71	62	61	49	52	46	36	25	18
(2)		65	60	54	50	38	40	35	30	23	19
(3)		53	49	45	43	31	32	29	25	18	15
(4)		63	54	44	38	31	33	25	22	19	16
(1)	138.9	89	74	65	64	52	53	49	40	28	21
(2)		68	63	57	53	39	41	36	31	24	20
(3)		55	51	46	44	32	33	30	26	19	16
(4)		67	57	47	40	33	35	27	23	20	17

Line.	Miles.	1	2	3	4	5	A	B	C	D	E
(1)	146.8	91	75	66	65	53	54	50	40	28	21
(2)		70	64	58	54	40	42	37	32	24	20
(3)		57	53	48	46	33	34	31	27	19	16
(4)		..	..	..	..	..	..	..	..	..	..
(1)	152.9	93	77	67	66	54	55	51	40	28	21
(2)		72	66	59	55	41	43	38	33	25	21
(3)		59	55	50	48	34	35	32	27	20	16
(4)		75	64	53	45	38	39	30	26	22	19
(1)	159.7	94	78	68	67	54	56	51	40	28	21
(2)		73	67	60	56	42	44	39	33	25	21
(3)		60	56	51	49	34	35	32	28	20	16
(4)		75	64	53	45	38	39	30	26	22	19
(1)	170.1	97	81	71	70	54	57	51	40	28	21
(2)		76	70	63	59	43	45	40	34	25	21
(3)		63	58	52	50	36	37	34	29	20	16
(4)		75	64	53	45	38	39	30	26	22	19

345 *Replication of Plaintiffs Replying to the First Amended Answer of the Railroad Commissioners and Attorney General et al.*

Plaintiffs introduced and read in evidence the "Replication of Plaintiffs Replying to the First Amended Answer of The Railroad Commissioners and Attorney General, et al.," filed by them in Equity 295, which Pleading reads as follows, towit:

"Herein come plaintiffs, and for replication to the defendants' amended answer herein say:

I.

"These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the amended answer of said defendants, for replication thereunto say: That they deny all and singular each and every allegation of fact therein and say that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants and that the answer of said defendants is uncertain, evasive and insufficient in law to be replied unto by these replicants; without that that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All — matters and things these replicants are ready to aver, maintain and prove as this Honorable Court shall direct and humbly pray as in their bill they have already prayed.

II.

"By way of further replication to said answer, they specially deny each and every allegation of fact in paragraph XVII of said answer contained and insofar as defendants seek to allege that the report, order, findings and conclusions of the Interstate Commerce Commission therein referred to are not supported by any evidence or any substantial evidence, complainants say that said order of said Interstate Commerce Commission cannot be collaterally attacked as in said paragraph attempted and that the matters and things therein by defendants alleged can only be set up and determined in a direct proceeding brought by parties with sufficient interest to entitle them to bring such proceeding against the United States in the Federal
District Court of the Western Judicial District of the State
346 of Louisiana in the Parish of East Baton Rouge in said Western District of Louisiana and complainants herein allege that the sole and only petitioners in the proceedings brought before the Interstate Commerce Commission resulting in the said order of said Interstate Commerce Commission herein involved was and is the Railroad Commission of Louisiana and that the legal residence of said Railroad Commission of Louisiana and the actual residence of each of the members thereof is in the City of Baton Rouge in the State of Louisiana in the Parish of East Baton Rouge in said Western District of Louisiana, and complainants further say that the Railroad Commission of Texas, defendant herein, has no such interest, property or otherwise in said order of the Interstate Commerce Commission herein involved as will permit it or its members as such commissioners, nor has the Attorney General of Texas, defendant herein, any such interest, property or otherwise in the matters and things involved in said order of the Interstate — Commission herein sought to be enforced as will permit them or either of them to assail or attack said order, directly or indirectly, by allegation of matter of fact or evidence tending to impeach the same or for lack of jurisdiction or power to make said order or for any error of law therein or for any cause whatsoever.

III.

"By way of further replication to defendants' 'further and special reply to Paragraph- III, Va, and VI of the bill' as contained in Paragraph XVII of said answer, complainants say:

1. They deny all and singular each and every allegation of fact in sub-paragraphs, I, II, III and IV of said Paragraph XVII of said answer wherein defendants seek to attack, set aside, suspend and restrain the enforcement, operation and execution of said order of the Interstate Commerce Commission of date July 7, 1916, and say that said order was made by the Interstate Commerce Commission upon due and legal complaint, regularly filed by the Railroad Commission of Louisiana; that the residence of the Railroad Commission of Louisiana was and is in the City of Baton Rouge in the

Parish of East Baton Rouge in the Western District of Louis
that upon filing of said petition, due and legal notice thereo
given and full and ample hearing thereon had and evi
847 adduced by all parties thereto for and against said petiti
and that thereafter the Interstate Commerce Commi
acting under and within the powers conferred upon it by the
to Regulate Commerce of the Congress of the United States and
amendatory thereof, made and entered said order and that the
is not subject to attack, direct or indirect, either for matters o
or of law by defendants herein, except by direct proceedings to
and brought against the United States in the judicial district
residence of the Railroad Commission of Louisiana upon whose
tion such order was made, and complainants say that neithe
Railroad Commission of Louisiana nor either of the mem
thereof did, at the time this suit was filed, reside in the Western
trict of Texas or at any place therein; that they do not now the
side and have never at any time resided therein, but at each a
of said times have resided and do now reside in the City of
Rouge in the Parish of East Baton Rouge in the Western Ju
District of the State of Louisiana and complainants say that no
the Railroad Commission of Texas nor either of the members th
nor the Attorney General of the State of Texas have any
interest, property or otherwise, in the matter of said order a
permit them or either of them to bring or maintain any proce
direct or indirect, to suspend or set aside, in whole or in part
order of the Interstate Commerce Commission. Complai
further say that said order of the Interstate Commerce Comm
was made upon due and legal complaint, full and legal he
within its jurisdiction and in full compliance with the Act to
ulate Commerce of the Congress of the United States and
amendatory thereof, is binding upon all parties thereto and up
parties to this suit and is a judgment in rem, binding upon al
ties whomsoever until the same has been set aside in a direct
ceeding for that purpose brought against the United States i
cordance with the provisions of Act of Congress approved O
22, 1913, and other statutes of the United States in such case
and provided, and complainants say that each and all of said a
tions in said answer are wholly immaterial and irrelevant t
issue herein.

848 IV.

"Especially replying to the allegations of section 7 of sub
graph IV of Paragraph XVII of said answer, complainants
the allegation therein made that the carriers affected by and p
defendant in the proceedings resulting in said order of July 7,
were the real and substantial petitioners therein and were a
the real and substantial beneficiaries of said order and they
the fact to be that the Railroad Commission of Louisiana was
the real, substantial and only petitioner in the complaint
which said hearings were had and upon which said orders
based, and especially replying to that portion of said section

of said answer which seeks by inuendo, but not by direct allegation, to charge that the proceedings before the Interstate Commerce Commission resulting in said order were collusive, and to sub-paragraph VI of Paragraph XVII of said answer, complainants, protesting that said allegations are wholly insufficient in law for that purpose and made in such indirect and evasive fashion as to render it impossible and unnecessary for these complainants to reply thereunto, they, nevertheless allege that said allegations, if same should be held to be such, are untrue and without foundation in fact. Complainants say that said complaint of the Railroad Commission of Louisiana upon which said order was based was made against the carriers defendants therein, parties complainant hereto, without collusion or co-operation with complainants or either of them; that complainants, parties defendant in said complaint, had no knowledge thereof until after due service of same by the Interstate Commerce Commission after the same had been filed therewith; that complainants herein, parties defendant thereto, immediately upon service of notice of such complaint being advised thereby that the Railroad Commission of Louisiana complained that the Texas intrastate rates and orders thereunto applicable were complained of by the Railroad Commission of Louisiana as illegally discriminative against the City of Shreveport and the inhabitants thereof as well as other points and citizens of the state of Louisiana and were an impediment to and burden upon interstate Commerce and realizing that it was proper and right that the Railroad Commission of Texas should assume the burden of the defense of its own rates and
349 orders, gave immediate notice to said Railroad Commission of Texas of the filing of said complaint and the issues therein involved and requested that it make itself a party defendant to said complaint and assume the burden of such defense. That notice of said complaint was given to the Railroad Commission of Texas by petitioner therein, the Railroad Commission of Louisiana. That by answers duly filed, the carriers, defendant in said proceeding and parties complainant hereto, raised the issue that the Texas intrastate rates complained of were not voluntary rates installed by defendant carriers, but were rates imposed and installed by the Railroad Commission of Texas, obedience to which was enforced by the severe penalties set forth in the original bill herein, and while said rates were unjustly and unreasonably low and confiscatory, that as above set out, they were rates made by the Railroad Commission of Texas, and that the Interstate Commerce Commission was without power or jurisdiction to alter or control the same. That of all this the Railroad Commission of Texas had prompt notice before any hearing thereon was had. That thereafter said cause was set for hearing at New Orleans during the month of September, 1911. That the carriers defendant therein, complainants herein, made especial request of the Railroad Commission of Texas that it should attend said hearing and participate therein. That said Railroad Commission or a majority thereof signified its intention to comply with the request of the carriers so to do, but as complainants are advised it failed to attend said hearing or participate therein. That thereafter on March 11, 1912,

the Interstate Commerce Commission rendered its opinion and or
in said cause, the same being Railroad Commission of Louisiana
St. Louis Southwestern Railway Company, et al., I. C. C. 3913,
which, as appears in 23d I. C. C., 31, reference is here made and
same is prayed to be taken as a part hereof as fully as if set out
length herein. That by the order therein, the Interstate Comme
Commission found and established reasonable class and commod
rates between Shreveport and Texas points, found that the Texas
trastate rates therein referred to were discriminatory as agai
Shreveport, and ordered said discriminations removed, which re
could only be attained in obedience to said order of the Inters
Commerce Commission by increasing the Texas intrastate rates
the level of those provided for application between Shre
350 port and Texas points as prescribed by said Commis
That the carriers defendant in said proceeding had reques
that the Railroad Commission of Texas participate in the hear
and argument of said matter before the Interstate Commerce C
mission which it did not do. That after the rendition
said decision the carriers, conceiving that they could not safely co
ply with the terms thereof and raise the Texas intrastate rates u
the power of the Interstate Commerce Commission to make s
order had been judicially established, informed the Railroad C
mission of Texas that it was their purpose to contest the validity
said order of the Interstate Commerce Commission by applicat
for injunction against the enforcement of same to the Comme
Court and requested the Railroad Commission of Texas to in
vene in said cause in such method as it saw proper in order that
validity of the order of the Interstate Commerce Commission mi
be tested; that the carriers defendant therein, to-wit, the Hous
East & West Texas Railway Company and the Texas & Pacific R
way Company, each filed in the Commerce Court its independ
bill asking an injunction against the enforcement of said order u
the ground that the Interstate Commerce Commission had tr
scended its jurisdiction in ordering the carriers to raise intras
rates; that the St. Louis Southwestern Railway Company of Te
and the Eastern Texas Railroad Company and the Missouri, Kan
& Texas Railway Company of Texas filed intervening petitio
That thereafter the Commerce Court rendered its decision upho
ing the order of the Interstate Commerce Commission and
missing the several bills. (See 205 Fed., 880.)

"That thereupon said petitioning and intervening carriers
fected an appeal from the decision of the Commerce Court to
Supreme Court of the United States, the effective date of the or
of the Interstate Commerce Commission having been suspen
from day to day until said matter might be decided by the Supre
Court of the United States, said carriers appellant informed
Railroad Commission of Texas of the pendency of said appeal,
nished them with copies of the briefs and arguments of appell
and requested that said cause be briefed by the Railroad Commis
of Texas by the Attorney General of said state appearing as am
curiæ. That the Railroad Commission of Texas advised that it wo

request the Attorney General of Texas to appear and argue said cause in the Supreme Court of the United States and said Attorney
351 General having suggested his intention so to do, the carriers furnished him with transcript of the record and the briefs of the appellant carriers. That no appearance, however, was made for the Railroad Commission of Texas or the State of Texas in said cause before the Supreme Court of the United States. That thereafter the Supreme Court of the United States having rendered its decision (see 234 U. S., 342) affirming the decision the Commerce Court and thereby sustaining the order of the Interstate Commerce Commission, it became necessary for these carriers to install the interstate rates required by said order which rates were in many instances higher than rates of the Railroad Commission of Texas.

"That thereafter said carriers and other Texas carriers affected thereby having prepared tariffs in accordance with said order of the Interstate Commerce Commission, on or about the 16th day of June, 1914, submitted the same to the Railroad Commission of Texas and asked its examination and approval thereof, but said Commission took no action upon said application and said tariffs were duly and legally published and became effective.

"That thereafter the Railroad Commission of Louisiana filed its supplemental petition with the Interstate Commerce Commission in said cause asking that its order in said case be extended to include various other carriers and that the application of said order be extended to all points within the State of Texas. That hearing on said supplemental application was set down for Shreveport for the 27th day of October, 1914. That said carriers, complainants herein, immediately furnished the Railroad Commission of Texas with a copy of said supplemental petition and requested the attendance of the Railroad Commission of Texas and its participation in said hearing. That a majority of said Commission was in the City of Shreveport upon the date of said hearing and one member thereof attended the hearing, but did not become a formal party thereto. That thereafter on June 17, 1915, the Interstate Commerce Commission made its supplemental report and order thereon, after full hearing had been had at Shreveport upon said application, which said order was made applicable to many carriers not parties to the original proceeding, and established rates to and from Shreveport within that portion of Texas described in the order and required the carriers to remove discrimination arising from the application of the
352 lower Texas intrastate rates which could only legally be done by raising said rates to the level of those required by the Interstate Commerce Commission, all of which will appear from said report and order filed herewith and as appears in Railroad Commission of Louisiana vs. St. Louis Southwestern Railway Company, 34 I. C. C., 472. That said order having been suspended by the Interstate Commerce Commission upon the application of interested Texas parties, a hearing was called thereon at Houston December 17, 1915, in which hearing one member of the Railroad Commission of Texas participated, although not formally appearing as a party thereto. That thereafter on July 7, 1916, the Interstate Commerce

Commission made its order therein, the application of whi
is herein involved and complainants say that throughout th
of these entire proceedings as hereinabove set out the carrier
ant therein, in absolute good faith, made and presented
every proper defense to the prayers of petitioner, the Railro
mission of Louisiana. That at each and every step in
ceedings, they have sought to advise the Railroad Comm
Texas of the nature and character thereof and in all pro
have endeavored to secure the action upon the part of the
Commission of Texas to the extent of making itself a part
ceedings before the Interstate Commerce Commission and
resort to the courts as hereinabove set out, and complain
that the Railroad Commission of Texas had full knowledg
and all of the proceedings hereinabove stated and were fully
in the premises, and while these complainants deny that sa
tions or attempted allegations as to collusion between th
plainants and the Railroad Commission of Louisiana are
to any issue herein, they allege that said allegations are
foundation.

V.

"Plaintiffs specially deny the averments in paragraphs X
XVII-A of said answer, that the order of the Interstate C
Commission was made without substantial or sufficient
and they specially deny all averments in said answer
contained, which set up that said order of the Interstate C
Commission, or any portion, part, subdivision, division o
thereof was made without substantial or sufficient
353 and to the contrary, plaintiffs allege that said order
is in every particular supported by sufficient evid

"Plaintiffs deny the correctness of the constructions atte
be placed on the said order of the Interstate Commerce Co
in said paragraphs XVII and XVII-A of said answer,
further deny the theory advanced in said paragraphs tha
thority of the Interstate Commerce Commission was limit
removal of the actual present discrimination, and that
mission could not make an order establishing such adjus
will permit the people of Shreveport and the people of
enlarge and extend the traffic between Texas and Shrev

"Replying to sub-paragraph 1 of paragraph XVII-A of
swer, plaintiffs aver that while the Houston, East & We
Railroad Company and the Houston & Shreveport Railro
pany, are owned by separate companies, the stocks of
panies are owned by the same interests, and for rate mak
poses they have been treated by the Interstate Commerce
sion as forming one line or through route, that the sam
with respect to the St. Louis Southwestern Railway Comp
the St. Louis Southwestern Railway Company of Texas,
same is true of the Kansas City Southern Railway Comp
by reason of these affiliations or connections five of the
operate between Shreveport and Texas, and of those, four

The Texas & Pacific Railway Company, the Missouri, Kansas & Texas Railway Company of Texas, the St. Louis Southwestern Railway Company of Texas, and the Houston & Shreveport Railroad Company, with its affiliated lines, The Texas & New Orleans Railroad Company, the Houston & Texas Central Railway Company, and the Galveston, Harrisburg & San Antonio Railroad Company, are among the six largest railroad systems serving the State of Texas, the other two being the Gulf, Colorado & Santa Fe Railway Company and the International & Great Northern Railway Company.

"Plaintiffs specially deny the allegations in paragraph XVII-A of said answer, which claim that there was not sufficient evidence of discriminations against Shreveport by a great many of the carrier-correspondents.

"Specially replying to sub-paragraphs 1, 2 and 3 of paragraph XVII-A of said answer, plaintiffs show that Southwestern Lines' Tariff 24-W, F. A. Leland's Interstate Commerce Commission
254 No. 1005, which carried all rates in effect between Shreveport, Louisiana, and points in Texas prior to November 1st, 1916, contained rates on practically every commodity on which rates were published by the Railroad Commission of Texas for intrastate application, and on a great many other commodities not mentioned in any of the Railroad Commission of Texas tariffs, and that with a few unimportant exceptions plaintiffs were parties to such tariff, that such tariff published rates on classes and numerous commodities between Shreveport and stations in Texas, including stations of minor consequence. However, if said tariff omitted to publish rates between Shreveport and any station in Texas, it, to that extent, showed discrimination against Shreveport.

"Replying to sub-paragraphs IV and V of said paragraphs XVII-A, plaintiffs deny the want of sufficient complaint or want of evidence, and that the order of the Interstate Commerce Commission did not require the carriers to establish through routes or through rates.

VI.

"Replying to paragraph XVII-B of said answer, plaintiffs deny the averments thereof, and allege that each witness representing Texas commercial interests, who testified at the hearing of the Interstate Commerce Commission at Houston, in December, 1915, to whom the question was put, admitted that there were no differences in transportation conditions between Shreveport and Texas and between points in Texas that would justify a difference of rates between Shreveport and Texas and between points in Texas for like distances.

VII.

"Replying to paragraph XVII-C of said amended answer, plaintiffs say that the general averments in the introductory part thereof are untrue.

"Replying to subdivision II, Sections A, B and C, of said para-

graph XVII-C, plaintiffs state that in no mileage scale of rates
published by the plaintiffs or by them under orders of the Rail
Commission of Texas, or the Interstate Commerce Commission
published by any other carriers voluntarily or under the order
any governmental authority, which plaintiffs know of, have
rates per mile ever been made the same for all distances, and
the criticisms which defendants undertake to make in
355 subdivision of said paragraph XVII-C, apply equally as
to all of the mileage scales of rates published by the Rail
Commission of Texas. Referring to the first illustration in
answer concerning the first class rate from Shreveport to Ab
Texas, as compared with the first class rate from Marshall, T
to Abneys, Texas, plaintiffs show that the initial and terminal
and station costs of originating and terminating the freight
substantially the same regardless of the distances that the fre
may be hauled, and herein, that the first class rate of 23 cent
ferred to, for application to all distances within ten miles, was
by the order of the Interstate Commerce Commission, upon
dence which showed that it requires approximately 23 cents
hundred pounds to pay the initial and terminal costs and st
costs of originating and terminating the freight. As the term
costs are practically the same without regard to distance of the
it is evident that the total cost per mile of handling freight,
cluding the terminal expenses, decreases somewhat in propo
to the distance of the haul. For these reasons it is not only
and equitable, but it has been the universal custom of rail
companies, as well as of rate regulating bodies, to fix mileage
much higher than in the succeeding units, so that in the case of
individuals or communities shipping over the same line of
road in the same direction from different points of origin to
same destination, the shipment moving the greater distance
pay a lower rate per mile for the last unit of distance. The
that Shreveport pays the same rate per hundred pounds to Ab
as to Marshall is due to the close proximity of those two stat
and the fact that they lie within the same unit of distance, in
application of the class scale of rates westward, from Shreve
over the line of the Texas & Pacific Railway Company.

"The following is an illustration of a shipment moving west
over the lines of the Texas & Pacific Railway Company from Sh
port and from Marshall. Hawkins is fifty-two miles west of
shall, and Crow is 58.4 miles west of Marshall, and the first
rate from Marshall to both Hawkins and Crow is 40 cents per
dred. Hawkins is 94.7 miles from Shreveport, and Crow is
miles from Shreveport, and the first class rate from Shreveport
Hawkins is 53 cents and to Crow is 57 cents.

356 "As stated by the defendants in the amended an
innumerable similar instances could be cited and they m
result from principles of rate making, which have heretofore
universally recognized as correct.

"Replying to Section A of sub-paragraph IV of said parag
XVII-C, plaintiffs allege the fact that the same rate prevails

Shreveport and from San Antonio to the stations between Warwick and El Paso, results from a peculiar rate system which prevailed and prevails in Texas under the tariffs prescribed by the Railroad Commission of said State, under which the State was divided into common point and differential territory, and where, after reaching a certain distance, all rates in common point territory were the same regardless of distance, but where the shipment went into the differential territory, certain figures were added to the common point rate, and which system the Interstate Commerce Commission, as stated in its report, did not feel that it would be wise to entirely abolish, although the same was modified by the rates named in the order of the Interstate Commerce Commission.

"Statement below shows comparison of distances and rates from San Antonio and from Marshall as in effect prior to November 1st, 1916, under Texas Commission Tariff:

To—	From San Antonio.		From Marshall.	
	Distance in miles.	First-class rate.	Distance in miles.	First-class rate.
El Paso	619	1 05	793	1 05
Alfalfa	613	1 05	787	1 05
Valeta	607	1 05	781	1 05
Belden	603	1 05	777	1 05
Clint	597	1 05	772	1 05
Fabens	590	1 05	764	1 05
Tornillo	584	1 05	759	1 05
Polvo	580	1 05	754	1 05
Ivar	573	1 05	748	1 05
Ft. Hancock	566	1 05	741	1 05
Madden	556	1 03	731	1 03
Toyer	540	1 02	714	1 02
Sierra Blanca	527	1 02	702	1 02
Grayton	517	1 02	710	1 02
Collado	494	1 04	734	1 04
Valentine	458	1 01	770	1 05
Aragon	432	99	795	1 05
Marfa	423	98	785	1 05
Alpine	397	96	760	1 05
Warwick	357	92	720	1 05

"That the condition complained of in said section A existed under the tariffs of the Texas Railroad Commission which were in effect prior to November 1st, 1916, as shown by these examples. Twice as much freight moves under the fourth class as under the first class. Freight traffic from Corpus Christi to Amarillo would move through Austin, a distance of 226 miles from Corpus Christi. Herman is a station on the line of the Fort Worth & Denver City, thirty-five miles north of Fort Worth, and 228 miles from Austin, and there are forty-seven stations on the Fort Worth & Denver City between Herman and Amarillo, a distance of 301 miles.

Under the fourth class rate of the Texas Commission, the rate fro
both Corpus Christi and Austin to each of these stations is 58 cents pe
hundred, although Austin is 226 miles nearer to each of them tha
Corpus Christi. Again, under the Texas Commission tariffs th
fourth class rate from Corpus Christi to Austin, a distance of 22
miles, is 58 cents, while the same rate of 58 cents applied from Aust
to Amarillo, a distance of 514 miles. Again, the Texas commissio
rate from Corpus Christi to Austin, 226 miles, was the same as fro
Corpus Christi to Amarillo, 734 miles.

"Replying to section B of sub-paragraph IV of said paragrap
XVII-C, plaintiffs state that there is nothing in the record of th
Interstate Commerce Commission or elsewhere that shows any diffe
ence in the cost of L. C. L. traffic between Shreveport and Texas m
between points in Texas, for like distances, and all evidence in an
way bearing on this subject is to the effect that the cost is substantiall
the same.

VIII.

"Replying to sub-paragraph 1 of paragraph XVII-D of sa
amended answer, plaintiffs deny the allegations thereof, except the
state that the class rates on the Texas & Pacific Railway betwe
Dallas and Shreveport and on the H. E. & W. T. between Houst
and Shreveport, which had been fixed by the Interstate Commerc
Commission in docket No. 3918, 23rd I. C. C. page 31, by its orde
dated the 11th day of March, 1912, were upon investigation in I.
S. Docket 710, found by the Interstate Commerce Commission to b
too low to be compensatory to the carriers, and were, by its order
July 7th, 1916, increased. Herein plaintiffs show that the class rat
so first fixed by the Interstate Commerce Commission in docket N
3918 were much lower than the class rates which the carriers pri
thereto had in effect between Dallas and Shreveport and betwe
Houston and Shreveport.

"Replying to sub-paragraph II of said paragraph XVII-D, plai
tiffs deny the allegations thereof and aver that there was ev
358 dence before the Commission to show the articles and comme
ities which moved between Shreveport and Texas points, a
that the record contained all evidence practicable and feasible sho
ing what would be reasonable rates applicable to such movemen
and that such evidence applied to the whole of such traffic betwe
Shreveport and Texas points, and herein plaintiffs state, as is w
known to the defendants, the Railroad Commission of Texas, it
and always has been impracticable and impossible to accurately
termine the expense of each particular movement of particul
freight.

"Replying to sub-paragraph III of said paragraph XVII-D, plai
tiffs deny the allegations thereof, and show that there was an abu
dance of evidence in the record before the Commission upon which
could and did make its order, and herein plaintiffs deny that a
such assurance as stated in said sub-paragraph III was made a
aver that Commissioner Hall, who presided at the hearing in qu

tion, in substance merely disclaimed jurisdiction over intrastate rates per se, and said that the jurisdiction of the Interstate Commerce Commission was confined to having reasonable rates between Shreveport and Texas, and to requiring the removal of the discrimination against Shreveport. In verification whereof reference is made to pages 385, 386, 392 and 395 of the record, and to the written agreement, pages 540 and 541 of the record. Herein plaintiffs show that they expressly refused to accept an agreement for the introduction of the evidence in question with any limitation, that the same would only be considered with respect to interstate rates. Record pages 394 and 395.

IX.

"Replying to sub-paragraph I of paragraph XVIII of said amended answer, plaintiffs admit that the distances therein stated are correct, with the exception that the distance via the St. Louis Southwestern Railway from Shreveport to the Texas state line is ninety-three miles instead of sixty-four miles. Plaintiffs show that in order to remove the discrimination against Shreveport it was necessary for the Interstate Commerce Commission, in its order, to provide rates applying to the distances mentioned in said paragraph I, and in support hereof state the following examples:

The distance from Shreveport to Jefferson, Texas, on the Texas & Pacific Railway is 47.7 miles. The distance from Marshall, Texas, also on the Texas & Pacific Railway, to Jefferson, Texas is 15.5 miles. The first class rate from Shreveport to Jefferson is 37 cents. The first class rate from Marshall to Jefferson, applying the same scale as from Shreveport, is 27 cents—but if the Railroad Commission of Texas scale from Marshall to Jefferson be applied the rate is 16 cents. Therefore, Marshall's geographical location gives it an advantage of 10 cents over Shreveport—but by the application of a lower and discriminatory scale this difference would be increased to 21 cents, or more than doubled.

"The distance from Shreveport to Tenaha, Texas, on the H. E. & W. T. Ry. is 54 miles. The distance from Nacogdoches, Texas, also on the H. E. & W. T. Ry., is 38 miles. The first class rate from Shreveport to Tenaha is 40 cents. The first class rate from Nacogdoches to Tenaha, using the same scale as from Shreveport is 33 cents. The first class rate from Nacogdoches to Tenaha using the Railroad Commission of Texas scale is 23 cents. Nacogdoches has a natural advantage, due to its geographical location, of 7 cents, but the application of the lower and discriminatory Railroad Commission of Texas scale would increase this advantage to 17 cents, or more than double.

"The distance from Shreveport to Lufkin, Texas, is 113 miles. The distance from Tyler, Texas to Lufkin, via the St. Louis Southwestern of Texas Ry., is 90 miles. The first class rate from Shreveport to Lufkin is 60 cents. By use of the same scale, the first class rate from Tyler to Lufkin is 50 cents—but by using the lower and discriminatory Railroad Commission of Texas scale the first class rate from Tyler to Lufkin would be 40 cents. Tyler has a natural advantage

due to its geographical location of 10 cents, but the application of the lower and discriminatory Railroad Commission of Texas scale would increase this advantage to 20 cents, or double.

"Except as herein admitted, plaintiffs deny the allegations of said sub-paragraph 1.

X.

"Replying to sub-paragraph II of paragraph XVIII of said amended answer, plaintiffs state that the report and the order of the Commission should be considered as a whole and not upon isolated extracts therefrom, and so considering the entire order and report, there is no inconsistency in any respect between the report, the find-
360 ings of the Commission, and the order made thereon. Plaintiffs aver that the record and evidence before the Commission when it made its order of July 7th, 1916, was much more extensive and comprehensive than the evidence that was before the Commission at the time it made either of its previous orders. That upon said additional and more comprehensive record of evidence, including much new matter, some of the class rates, particularly those for shorter distances named in its former orders, were advanced by the order of July 7th, 1916. Herein plaintiffs show that in many instances the rates so found reasonable by the order of July 7th, 1916, were lower than the existing rates of the Railroad Commission of Texas, which is notably true of the fourth class rates for all distances between seventy and two hundred and fifty miles.

"Except as herein indicated, plaintiffs deny the allegations of said paragraph XVIII of the amended answer, and deny the correctness of the attempted constructions sought thereby to be made on portions of the order of the Interstate Commerce Commission.

XI.

"Replying to paragraph XIX of said amended answer, plaintiffs allege that there have been numerous and comprehensive inquiries made in the opinions rendered by the Interstate Commerce Commission, regarding every item or portion of the Western classification, the reasonableness of which appeared questionable to the Commission, or the unreasonableness of which was complained of by any individual or community. The Western classification has, at all times, been applied to interstate shipments moving to and from Texas, and if the merchants, manufacturers, producers, consumers or shippers of Texas have been dissatisfied in any respect with the provisions of the Western classification it has been only necessary for them to make proper applications or present proper complaints to the Interstate Commerce Commission to have their claims fully investigated and adjudicated.

"Plaintiffs represent that the Interstate Commerce Commission has full control over the making of any changes in the Western Classification for the reason that the carriers are required by law to file any proposed changes with the Interstate Commerce Commission, and the Commission may either upon complaint or upon its own mo-

suspend any such proposed change until such time as the
281 merits of the same can be investigated and determined by the Commission.

"Plaintiffs allege that in order to remove the discrimination against Shreveport it was and is necessary that the same classification be used between Shreveport and Texas as between points in Texas, because the classification is a necessary factor in determining the amount of the rate.

"Plaintiffs deny that the evidence before the Interstate Commerce Commission was insufficient to enable it to pass on the equity and propriety of adopting the Western classification governing shipments between Shreveport and Texas and applying to shipments between points in Texas. It is true, as alleged, that there are articles in the Western classification which are not being shipped between Shreveport and Texas, but it is likewise true that such articles are not being shipped between points in Texas. Nevertheless, it is proper that such articles be included in the classification so that when occasion arises for the shipment thereof there will be a rate applicable thereto.

Plaintiffs specially deny section B of sub-paragraph II of paragraph XIX of said amended answer, and say that there has been no delegation of authority by the Commission to the interested carriers or other persons or bodies, because, as aforesaid, the Western classification is under control of the Interstate Commerce Commission, as it may suspend and prevent the taking effect of any proposed change therein which does not meet the approval of the Commission.

"Referring to the heading Livestock L. C. L. in sub-paragraph III of said paragraph XIX, plaintiffs state that there has been no change in Livestock L. C. L. rates, that such rates fixed by the Railroad Commission of Texas are in effect. That while the Western classification publishes certain ratings for application to less than carload shipments of livestock, the order of the Interstate Commerce Commission requiring the application of the Western classification, does not affect freight for which there is a specific commodity tariff, and there is such commodity tariff established by the Railroad Commission of Texas naming L. C. L. rates on livestock, which is still in effect.

"Replying to sub-paragraph IV of said paragraph XIX of said answer, plaintiffs aver that the carload minimum on the articles or items mentioned in said sub-paragraph IV has not been increased through
282 the application of the Western classification, for the minimum carload rates provided in the Western classification are to be observed only when no minimum carload rates are provided in commodity tariffs applicable to the articles in question, and minimum carload rates are provided in commodity tariffs applicable to each and every one of the articles mentioned in said sub-paragraph IV, so that the application of the Western classification has not in any way changed or affected the tariff of rates or minimum carload weight provided in the commodity tariffs for application to those articles.

"Replying to sub-paragraphs VI, VII, VIII and IX of said paragraph XIX, plaintiffs show that the provisions of the classification therein complained of, are severable and if not in accordance with

the law will not be enforced by the Courts. They assert that rule requiring the shipper to state the value of his goods is reas able, as the care and diligence which should be used for the pro tion of the property, depends to some extent on its value, etc. L wise they say that it is not unreasonable that rates should be fixed classifications made with some regard to the value of the prope They say that they are not equipped for the safe handling of b notes, coin, currency, etc.; that it has been customary to send articles by express or U. S. mail, and it would not be reasonable require them to transport same.

"Further replying to said sub-paragraphs, plaintiffs state that order to complete the removal of discrimination against Shreve it is necessary that the same rule of liability for loss and damag freight and the same forms of bills of lading be used in respec shipments between points in Texas.

"Except as herein indicated, plaintiffs deny the allegations of paragraph XIX.

XII.

"Replying to sub-paragraph I of paragraph XX of said amen answer, plaintiffs state that it is natural that Shreveport should greater volume of business, area and population considered, in Eastern than in the Western section of Texas, and for the same rea each jobbing city in Texas distributes proportionately more busi within a radius of 150 to 200 miles, but practically all of
363 important jobbing cities of Texas, many of which are of greater commercial importance than Shreveport, ship c peritively large volumes of traffic distances of three, four and hundred miles, and ship in less but still important volume as fa eight hundred miles, and with the same system of freight rates t is no reason why Shreveport may not do likewise. The present justment of rates which became effective November 1st, 1916, u the order of the Interstate Commerce Commission, dated July 1916, has, since November 1st, 1916, been under constant attack fore the Interstate Commerce Commission, in the Courts, State Federal, and elsewhere and otherwise. Until such attacks h ceased or until such adjustment of rates has been finally affirmed that shippers to and from Shreveport may know what rates they rely upon, it cannot be known to what extent the commerce betw Texas and Shreveport will be increased, if and when such adjustm is finally made permanent.

"Except as indicated, plaintiffs deny all of the allegations of paragraph XX.

XIII.

"Replying to sub-paragraphs I and II of paragraph XX-A of amended answer, plaintiffs state that the Interstate Commerce C mission, as plaintiffs understand it, having found that there wer transportation conditions which would justify higher rates bet

Shreveport and Texas than for like distances between Texas points, decided in effect that the Commission would not provide higher rates between Shreveport and Texas than for like distances in Texas, because due to her geographical location, the so-called inbound rates from the Eastern and Central sections of the United States were lower to Shreveport than to certain of the cities of Texas, holding to the view that Shreveport ought not to be deprived of the advantage of her natural location by an artificial rate adjustment. If the contrary theory is to prevail, then Galveston and Houston should take higher rates for the same distances to points in Texas than Shreveport, Dallas, Fort Worth and San Antonio, for the reason that Galveston and Houston have lower inbound rates from the Atlantic Seaboard, and Dallas should take higher rates to Texas points than other Texas cities, for the reason that one half of the population of Texas is within 100 miles of Dallas, which gives her an immense trade advantage,

against which other cities should be equalized by lower freight
864 rates. Plaintiffs show that the so-called inbound rates to Shreveport, alleged in said paragraph XX-A to have been fixed by the order of the Interstate Commerce Commission, to Shreveport, are from points in Texas from which it was admitted that no transportation conditions existed which would justify a higher rate to Shreveport for like distances than between points in Texas.

"Plaintiffs represent that where departures were made from the Western classification as charged in said paragraph XX-A, the same change was made between Shreveport and Texas and between Texas points, and the effect of the change is to give the shipper a lower rate or better terms of transportation, so that no one can complain thereof.

"Plaintiffs show that the livestock contract or bill of lading referred to in sub-sections A and B of sub-paragraph II of paragraph XX-A is not contained in and is not part of the Western classification, but is a form of contract or bill of lading in use by some of the plaintiffs, the legality of which in no way depends on the Western classification.

"Except as herein indicated, plaintiffs deny all of the allegations of said paragraph XX-A.

XIV.

"By way of further replication to paragraph XXI of said amended answer, these complainants, protesting that there is no fact or facts therein alleged sufficient to constitute an estoppel as against these complainants whereby they are estopped to assert the right either to obey without let or hindrance the paramount laws of the United States or to question the validity of an unreasonable or confiscatory order of the Railroad Commission of Texas, they deny all and singular each and every allegation of fact in said paragraph contained and deny that under the provisions of any valid law of the State of Texas or any action of these complainants or either of them thereunder that complainants or either of them have been or are estopped to assert the right of compliance without let or hindrance with the valid order of the Interstate Commerce Commission herein

involved or that they are estopped to question by proper legal proceedings the reasonableness or constitutionality of any rate, rule or order of the Railroad Commission of Texas. They further deny that by the provisions of the charter of either of these complainants or any act by either of them thereunder taken, they or either of them are estopped to assert their right to comply with the order of the Interstate Commerce Commission herein involved or that they are estopped to assert that any rate, rule, regulation or order of the Railroad Commission of Texas is unjust, unreasonable or confiscatory. Complainants say that the several constitutional and statutory provisions set up in said section XXI of said answer and the several rights therein mentioned are each and all subject to the paramount authority of the Constitution of the United States and especially of that provision of Section 8 of Article I of said Constitution which provides that

'The Congress shall have power to regulate commerce with the foreign nations, and among the several states and with the Indian tribes,'

and of the laws of the United States passed in pursuance thereof and especially the Act to regulate Commerce and the various acts amendatory thereof, and of Article XIV of the amendments to the Constitution of the United States which provides that

'No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws,'

and that provision of the Constitution of the State of Texas, to-wit, Article I, Section 19 thereof, to the effect that

'No citizen of this state shall be deprived of life, liberty, property, privilege or immunities or in any manner disfranchised except by due course of the laws of the land,'

and complainants say that under and by virtue of the Railroad Commission Act of the State of Texas in said paragraph referred to and for which see Chapter XV, title 115 of the Revised Statutes of the State of Texas, Articles 6653-6716, the Railroad Commission of Texas has power only to make just and reasonable rates, rules and regulations and that under the provisions of said act any carrier or other party at interest dissatisfied with any rate, classification, rule, charge, order, act or regulation has power, privilege and authority to challenge the reasonableness, fairness and justness thereof in any court of competent jurisdiction in Travis County, Texas, and these complainants say that if there is any legislative act or constitutional provision in the State of Texas, which is not admitted, but is denied, which has the effect to estop these complainants to set up the right to comply without let or hindrance with the valid orders of the Interstate Commerce Commission and especially the order herein involved, that the same are void as in conflict with

the paramount authority of the United States as contained in the commerce clause of the federal constitution and the acts passed in pursuance thereof as hereinabove set out, and complainants further say that if any act of the Legislature of the State of Texas, which is not admitted, but denied, contains any provision which seeks to estop these complainants or either of them from questioning the fairness, justness or reasonableness of any rate, rule, regulation, practice or order of the Railroad Commission of Texas or to assert that any such rate, rule, order, regulation or practice is confiscatory, that such act is in conflict with the due process clauses both of the federal and state constitutions as hereinabove set out.

"Specially replying to sub-paragraph III of paragraph XXI of said answer, complainants deny all and singular each and every allegation of fact therein, and they specially deny that any act of the Legislature of the State of Texas as granted to any railroad therein or that these complainants or either of them ever received any land grant upon the condition, either express or implied, that they or either of them should be deprived of the right or should be estopped to set up the right of compliance without let or hindrance with the orders of the Interstate Commerce Commission made in pursuance of the provisions of the Act to Regulate Commerce and of the paramount authority of the Constitution of the United States, and complainants further deny that these complainants or either of them or their predecessors or remote vendors have ever received any land grant from the State of Texas in pursuance of any act of the Legislature of the State of Texas or of any act or thing done by them or either of them or their predecessors or remote vendors whereby they or either of them have been or could be or are now estopped to assert that any rate, rule, regulation, act or order of the Railroad Commission of Texas is unjust, unreasonable, unfair or confiscatory, and complainants say that if any act of the Legislature of any constitutional provision of the State of Texas under which any land grant was acquired by any railroad company in this state contains any provision whereby such railroad or its successor or vendee is
367 estopped from seeking to comply with the orders of the Interstate Commerce Commission, which is not admitted, but is denied, that such legislative act or constitutional provision is void as in conflict with the paramount laws of the United States, and complainants say that if any remote vendor or predecessor in interest of any complainant herein has acquired any land grant from the State of Texas by which it would be estopped to assert the right of compliance with the paramount laws of the United States, which is not admitted, but is denied, that such acts would not be and are not binding upon these complainants or either of them. Complainants allege the fact to be that neither of these complainants now own any land grant obtained from the State of Texas; that it is true that the vendors and remote vendors of some few of these complainants did receive certain land grants from the State of Texas; that said grants were made upon the consideration that for every section of land granted to the railway company, applicant, that said company would survey and pay the cost of surveying of two sections, the

alternate sections to belong to the State of Texas, and that each
way company applicant should construct a given mileage of c
pleted railway; that the moving cause and consideration for s
grants were the utter lack of railway transportation in the Stat
Texas, the consequent low value of its lands and the immense
pense of surveying same. That each and all of the railway c
panies receiving such grants fully and faithfully complied with
terms thereof, surveyed at their own expense the lands subsequ
granted to them and each alternate section for the state and
structed the railways in compliance with the terms of the sev
acts providing for such grants and that all the condit
and consideration connected therewith have been fully
and complied with and said transactions become fully exec
and completed. That at the time of said grants of the surveys
acquisition of lands thereunder, said lands were of but little v
and in many instances of value not equal to the cost of the sur
and completion of title and in many instances the certificates of
lands were sold by the original beneficiaries thereof for s
amounts and prior to the issuance of final titles, and these compl
ants upon information and belief allege the fact to be that in
tically every instance where lands have been granted to rai
companies under the land-grant acts of the State of Te
868 that the properties including said lands of said orig
grantees have been sold out under mortgage foreclosures
have passed into the hands of third parties, and they allege the
to be that but few, if any, of these complainants ever acquired
the original grantees any portion of such land grants and that
alleged by defendants any act of estoppel could be attributed to
original grantees therein, which is not admitted, but is wholly
nied, that no one of these complainants is bound thereby.
plainants say that under the laws of the State of Texas the gra
of such lands were required to alienate the same within given pe
and that all of such lands have long since been so alienated;
neither of these complainants now own such lands and that no
of the values upon which they are entitled to a reasonable re
consists of such lands. Complainants say that all of the terms
conditions upon which said grants were made have been fully
plied with in the surveying of vast quantities of lands for the S
in the construction of railways by the grantees in accordance
the terms of the grant and in the increased values of all lands
properties directly incident to and resultant from the construc
of the railways receiving the grant. Complainants deny that
or either of them have received any benefit from said land g
by defendants set up and deny that they or either of them
estopped to maintain this action by reason of any allegation in
paragraph of said answer contained.

"Complainants say that as to the allegations in sub-paragrap
of said paragraph XXI that said order of the Interstate Comm
Commission shows upon its face that the same was made upon n
full hearing and evidence and that same is conclusive on all pa
hereto and is not subject to collateral attack as therein attempte

otherwise than by direct suit brought against the United States as hereinabove set out, and complainants further say that the same cannot be attacked, set aside or questioned otherwise than by evidence submitted to the Interstate Commerce Commission, and that all allegations of fact to that end are irrelevant, incompetent and immaterial.

369 XV.

"By way of further replication to defendants' sub-paragraph III of paragraph XXI of said answer, complainants say that defendants are not entitled to the accounting in said paragraph prayed for nor do the matters therein set up constitute any defense to this suit, for that it does not appear from any allegation therein that the Legislature of the State of Texas has at any time made provision by law for the repayment to any company, complainant herein, of the amount expended by them in the construction of its said road together with all moneys for permanent fixtures, cars, engines, machinery, chattels and real property now in use of said road with all moneys expended for repairs or otherwise and interest on such sums at the rate of 12% per annum as by section seventeen of the act of February 7, 1853, set up by defendants in their original answer nor is there any allegation that the Legislature of the State of Texas will do so, and complainants deny that either under the terms of said act or any proceedings or actions thereunder by any of these complainants or their remote predecessors or vendors is there any legal or equitable title in the State of Texas in or to the property of these complainants. Complainants further say that said act of 1853 has been expressly repealed by the Revised Statutes of 1879, 1895 and 1911. Complainants further say if this be not true and that said act of 1853 is still effective as by defendants in the original answer alleged, then complainants say that said section seventeen thereof relied upon by defendants was expressly repealed by the act of January 26, 1860, as per Chapter 29 of the General Laws of the Eighth Legislature of the State of Texas, and that if said act is effective, said section seventeen has been by said repeal removed therefrom and it appears by section fifteen of said act that each of these complainants is entitled to a net return of not less than 12% per annum upon its capital stock. Complainants, as hereinabove in this replication set out, say that they or either of them have not now in their possession any lands, moneys or donations from either the State of Texas or from individuals, counties, towns or communities; that if any of their predecessors or remote vendors have received

370 any grant or donation of lands, moneys or other property to which were attached conditions or limitations such as by defendants sought to be alleged, which is not admitted, but denied, that these complainants and each of them have received and purchased the present properties belonging to the several companies complainant herein, absolutely free of any and all such limitations, conditions and considerations, but complainants allege the facts to be that no such limitations, considerations or conditions

as by defendants alleged were attached to or involved in any grant of land by the State of Texas or otherwise or any donation of any character to the original grantees or donees and they allege the fact to be that such original grantees and donees, if any, had the right under the law then existing and at all times since to earn a just and reasonable return upon the actual value of their railroad properties devoted to public use and these complainants allege that they and each of them have the right under the constitution and laws of the United States and of this state to earn a just and reasonable return upon the actual values of their properties devoted to public use without deduction for or on account of either or any of the matters and things in this paragraph of said answer alleged.

XVI.

"By way of further replication, complainants deny all and singular each and every allegation of paragraph XXIII of said amended answer. They especially deny that the failure of complainants or either of them to receive a fair and just return upon their investments is due to any substantial extent to the failure of complainants to receive due, proper or just revenues out of their interstate traffic, freight and passenger. Complainants say that such interstate freight and passenger rates are subject wholly to the regulation of the Interstate Commerce Commission and that each of complainants *do* seek and *have* always heretofore sought to charge and receive such reasonable rates for such services as will be sustained and permitted by the Interstate Commerce Commission, which has full power and jurisdiction in the premises. Complainants deny that they accept unfair or unreasonably low divisions upon the interstate traffic, passenger or freight, and deny that they receive undue or inadequate proportions of interstate revenue. They deny that complainants or either of them are dominated by any so-called alleged 'parent corporations' and deny that any such alleged
371 parent corporations have the ability to control or do control the routing of traffic or the divisions thereof to complainants' detriment, and while complainants say that said allegations are irrelevant and immaterial to any issues herein that complainants' divisions of through interstate rates and their proportions of through interstate freight are just, fair and reasonable and are in excess of their proportion on intrastate through rates and interline rates, all of which is well known to defendant, the Railroad Commission of Texas. While complainants say that the matters and things alleged in sections 1, 2 and 3 of sub-paragraph I of paragraph XXIII of said answer are irrelevant and immaterial to any issue herein, that complainants deny the correctness and the accuracy of the figures, compilations and computations therein made. They deny that it costs each of them approximately as much per ton or per ton mile or per passenger or per passenger mile to handle their interstate traffic as it does to handle their intrastate traffic and they allege the fact to be that while, by reason of the fact that the average length of haul of the interstate freight is far greater than the averag

length of haul of intrastate freight that the rate per ton per mile upon interstate freight is somewhat less than on intrastate freight, that by reason of the low minimum carloads permitted by the Texas Classification, superseded by the Western Classification under the order of the Interstate Commerce Commission herein, and by reason of the light loading of cars engaged in intrastate traffic and of the free incidental services required by the regulations of the Railroad Commission of Texas such as free switching, milling-in-transit, re-consignment privileges and by reason of the double terminal expenses incident to the great number of short-haul transits and many other considerations too numerous to be pleaded here, the cost of performing the intrastate freight service is far greater and is in fact from 100% to 300% greater per unit of traffic than is the case with interstate freight.

XVII.

"By way of further replication to paragraph XXIV of said amended answer, complainants deny all and singular each and every allegation therein, and while they show to the Court that the allegations of said paragraph as to the intrastate rates charged for the passenger traffic in Texas are wholly irrelevant to any inquiry
372 herein for that this suit involves only the right of complainants to earn a reasonable return upon that portion of their properties devoted to the freight service and for the reason that in the absence of any allegation therein that the rates of passenger fare charged and collected are unreasonably low it is not available to the Railroad Commission of Texas or the Attorney General to complain that the average amount received for each passenger per mile is less than the maximum permitted by law, nevertheless, complainants deny each and all of the allegations of fact in said paragraph contained and especially those in sub-paragraph (A) of said paragraph. They deny that they have voluntarily and without any compulsion of law reduced the rates upon a large portion of their intrastate passenger traffic to such an extent as to deprive themselves of many millions of dollars per year in aggregate revenues and they specially deny that the Railroad Commission of Texas has never exercised its power to reduce such passenger rates below the maximum provided by law. They allege the facts to be that under the laws of the State of Texas they have not the absolute right to charge three cents per mile for each mile of transportation; that under the rules and tariffs of the Railroad Commission of Texas railroad companies are not permitted to charge more than one-half of the adult rates for all children over five years of age and under twelve years of age. That every child, therefore, carried at half of the adult rate of 1½ cents per mile would reduce the average rate per passenger per mile received; that under the tariffs and rules of the Railroad Commission of Texas railroad companies are required to sell what is called 'party tickets' to parties of not less than 14 at two cents per mile per capita and also required to sell party tickets of from ten to twenty persons at a rate

of 2½ cents per mile per capita and to parties of twenty-f
sons or more at the rate of two cents per mile per capita a
are further required to sell interchangeable mileage or mon
books at the rate of 2½ cents per mile and each company
quired to meet the short line rate between competitive points
it would be impossible, therefore, for railroad companies to
with the rules and regulations and tariffs of the Railroad C
sion of Texas and at the same time receive three cents per m
each mile of transportation honored. Complainants further
that for the purpose of encouraging travel on spe
373 casions low round-trip and excursion rates are g
These low rates are given for the purpose of producin
encouraging travel which would otherwise not take place
securing of passenger traffic which would not move under
rates. As examples of these excursion rates, complainants
the rates from North Texas to Galveston and return duri
summer, the rates to the great Dallas Fair, to the Houston C
to the San Antonio Battle of Flowers and low rates which
on at the request of different cities and towns for special co
and complainants say that while it is true that these lo
operate to reduce the sum received per passenger per mile,
is good business judgment to install the same in that it
the use of passenger facilities to the maximum of efficien
produces large revenues which would otherwise be wholly lost.
plainants further say that in addition to the children's rate
rates, and excursion rates above alleged the law permits and
sentiment practically requires the granting to ministers of the
sisters of charity and the indigent poor rates at half of the
fare, all of which operates to reduce the amount received p
senger per mile. And complainants say that they have p
the maximum passenger revenue on their intrastate traffic per
under the laws of this state and the rules and regulations
Railroad Commission of Texas. Further replying to sub-pa
(B) of paragraph XXIV of said answer, complainants de
allegations thereof and they specially deny that either
throughout their history the railroads of Texas have vol
dissipated their revenues and the proper sources thereof by
itously giving away every year many millions of dollars of r
and the opportunity to receive the same in the form of fre
to favored passengers and allege that the figures given in sa
graph (B) are incorrect and the inferences therefrom wholl
out justification. Complainants say that substantially 69
the total free transportation mileage represents mileage
by employes of complainants and their families upon free tra
tion. That 24.3% represents exchange transportation issue
ficers, agents and employes of other railways; that 1.7% re
mileage traveled on free passes by public officials of
374 such as rangers, sheriffs and other peace officers, ha
ficers and others; that approximately .4 of 1% re
mileage traveled by public officials of the United States, po
inspectors, railway mail service employes and others; that

mately 1% of the mileage traveled on free transportation represents that issued in exchange for newspaper advertising; that approximately 2.4% represents mileage traveled by those to whom it was legally permissible under the head of 'charity, religion' and similar purposes. That all of said free transportation is expressly permitted by the laws of the State of Texas and is presumably for the good of the public and of the railways. That much of said transportation issued to employes of particular companies and granted by exchange to employes of other companies is not in reality free transportation, but is granted to employes while traveling on the business of such companies and that the granting of free transportation to the employes and their families operates to the public good and to the greater efficiency of the service. Complainants wholly deny that any excessive amount of free transportation is issued to either or any of the classes aforesaid and say that the Railroad Commission of Texas cannot be heard to complain because of the issuance of free transportation to public officials of the state thereby saving expenses to the state when the same is expressly permitted by law. Complainants further say that it does not follow that there is any loss of passenger revenue to these complainants by reason of such issuance of free transportation, and especially is this true as to the transportation issued to their employes and their families who otherwise would not travel. Complainants say that the free transportation complained of by defendants herein causes no extra expense other than the clerical record and accounting necessary and that they and each of them have kept such transportation to the lowest level consistent with efficiency of operation and sound public policy.

"Complainants further specially deny the allegations of sub-paragraph (C) of said paragraph XXIV. They deny that complainants have during each or any of the years of their history dissipated their revenues, net or gross. They deny that they have to any substantial extent voluntrily deprived themselves of any revenue which they otherwise would have received and retained, but allege the fact to be that they and each of them are now
375 conducted and operated and have continuously throughout their life been conducted and operated economically and skillfully.

XVIII.

"By way of further replication, complainants deny all and singular the allegations of paragraph XXV of said amended answer. They deny that the order of the Interstate Commerce Commission herein involved was made, in whole or in part, upon the application or petition of either or any of the complainants herein. They deny that said order was made in whole or in part upon the application of Taylor-Hanna James Company, a corporation whose principal place of business is within the Western District of Texas, or of the Waco Chamber of Commerce, whose principal office and place of business and the residences of whose members are within said Western District,

er of U. S. Paukett or of the Jobbers and Manufacturers' League and Manufacturers' Club, whose residence and citizenship and the residences and citizenship of whose members are within the Western District of Texas, and they allege that said order was made solely and wholly upon the application and petition of the Railroad Commission of Louisiana, whose residence and the residence of whose members is and was at the time the several applications and orders herein involved were made in the City of Baton Rouge in the Parish of East Baton Rouge and in the Western District of Louisiana.

XIX.

"By way of replication to paragraph XXV of said answer, complainants say that the Interstate Commerce Commission is neither a proper nor a necessary party hereto, and they further say that said order of the Interstate Commerce Commission here involved cannot be attacked nor can the same be suspended or set aside, in whole or in part, otherwise than by a direct proceeding brought for that purpose against the United States of America brought in the Federal Court of the Western District of Louisiana at Baton Rouge.

XX.

"By way of further replication to paragraph XXV of said answer, complainants say that said order of the Interstate Commerce Commission cannot be annulled or set aside, in whole or in part, except in a direct proceeding brought for that purpose against the United States of America in the District Court of the United States for the Western District of Louisiana at Baton Rouge in said state.

376 XXI.

"By way of further replication to paragraph XXV of said amended answer, plaintiffs specially deny that said order of the Interstate Commerce Commission or any part thereof, was made on the petition of any person or corporation residing in the Western District of Texas, and except as to the averments of names, officers, and residences of persons and corporations, as stated in paragraph XXV, plaintiffs deny all of the allegations thereof.

XXII.

"Replying to paragraph XXVI of said amended answer, plaintiffs admit that the Railroad Commissioners, or a majority thereof, the Railroad Commission and the Attorney General of Texas, are parties to causes No. 710, 729, 8290 and 8418 before the Interstate Commerce Commission. Plaintiffs aver that they did not become such parties until sometime after the order of the Interstate Commerce Commission of July 7th, 1916, was made.

XXIII.

"By way of further replication to paragraphs XXVI, XXVII and XXVIII of said answer, complainants say that defendants are wholly without such property right or interest in the matters and things involved in said order of the Interstate Commerce Commission here involved as to entitle them to the relief in said paragraphs XXVII and XXVIII prayed for or to any relief, and they further say that defendants are not entitled in this cause to any order suspending said order of the Interstate Commerce Commission or restraining the enforcement, operation or execution of the same pending the final disposition of this cause, nor are defendants, by reason of anything in their said answer alleged, entitled to any order or decree staying or suspending, in whole or in part, the operation of said order of the Interstate Commerce Commission, temporarily or permanently, for that such relief can only be had by direct proceeding brought for that purpose against the United States in the District Court of the United States within and for the Western District of Louisiana at Baton Rouge.

XXIV.

"Wherefore, complainants pray that defendants take nothing by their prayers in said answer contained that said order of the Interstate Commerce Commission be annulled and set aside in whole or in part; that they be denied all temporary and permanent relief
377 as in said answer prayed for, and they here renew the prayers in their original bill and in their supplemental bill, and pray for such other and further relief, both general and special, as to the Court may appear just and equitable."

378 *"First Supplemental Answer of Railroad Commission of Texas et al."*

Plaintiffs introduced and read in evidence the "First Supplemental Answer of Railroad Commission of Texas, et als.," filed in Equity 295 March 26th, 1917, which reads as follows:

"Come now Allison Mayfield, Earle B. Mayfield and C. H. Hurdleston, members of and constituting the Railroad Commission of Texas and B. F. Looney, Attorney General of Texas and, under leave of the Court, and in reply to Plaintiff's Supplemental Bill of Complaint, file this their First Supplemental Answer and for such Answer say:—

I.

"That the allegations contained in Paragraph Number 'I' of said Supplemental Bill of Complaint are admitted to be true.

II.

"As to the matters set forth in Paragraph Number 'II' of said Supplemental Bill of Complaint these Defendants here refer to and make a part hereof all the allegations contained in their First Amended Answer filed herein on the 20th day of March, 1917.

III.

"These Defendants admit the preparation and filing of the tariffs as alleged in Paragraph Number "III" of said Supplemental Bill of Complaint, but deny all other matters of fact and law therein alleged, and especially deny:—

"(1). That any of said tariffs, or the regulations therein contained, were prepared or filed pursuant to or in obedience to or under the authority of any order,—lawful or otherwise,—of the Interstate Commerce Commission in-so-far, at least, as the same refer to or affect the movement of intrastate traffic in Texas, and that any rate, rule or regulation contained in any of such tariffs applicable to, or to be made to apply to, the movement of intrastate traffic, and which differ from the rates, rules or regulations prescribed by the laws of Texas or by the Railroad Commission of Texas therefore, is the lawful or reasonable rate, rule or regulation to be applied by plaintiffs to such traffic;

"(II). That the Interstate Commerce Commission, through its Suspension Board, or in any other manner, upon the petition
879 of B. F. Looney, or any other party, passed upon, or had authority to pass upon, the reasonableness and legality of any or all of such tariffs, or the various provisions thereof, in-so-far as the same applied to, or were to be applied to, the movement of intrastate traffic in Texas, and, on the contrary, these Defendants say:—

"(A). That the Plaintiffs were not required to prepare or file with the Interstate Commerce — any such tariffs to be applied to the movement of intrastate traffic in Texas, and the doing of the same was a mere gratuitous act of the Plaintiffs, in no way required by law, and wholly incompetent to render such tariffs as applicable to intrastate commerce lawful;

"(B). That the only tariffs required by law to be prepared or filed by the Plaintiffs were such as were applicable to the movement of interstate traffic, and such parts of said tariffs as were so applicable were the only parts thereof over which the Interstate Commerce Commission had any jurisdiction and even as to such parts thereof said Commission has never passed upon or approved the same,—and in this connection these Defendants say:—

"That the Interstate Commerce Commission, on the occasions mentioned in Paragraph Number 'III' of said Supplemental Bill, and on numerous other occasions, has held that it had no jurisdiction or authority to pass upon the reasonableness or legality of such portions of such tariffs and regulations as purport to apply to the movement of intrastate traffic in Texas, and for such reasons has refused to enter

sion jurisdiction thereof as will be made to appear upon hearing hereof;

"That by the actions of the Interstate Commerce Commission in suspending certain portions of such tariffs as to interstate commerce and by reopening said causes in their entirety — has expressed grave doubt as to the justice, reasonableness or legality of its order of July 7th, 1916, even as applicable to the interstate traffic therein dealt with, and has thereby deprived such order of the presumptions of justice and legality and finality otherwise pertaining thereto, and for this reason the restraining order heretofore granted herein should be dissolved and the prayer for a temporary injunction should be denied.

IV.

"These Defendants admit the preparation and introduction of Senate Bill No. 219 as alleged in Paragraph Number 'IV' of said Supplemental Bill of Complaint and say that said Bill pro-
79½ posed no violation of the Constitution or laws of the United States or of the rights of the Plaintiffs, but on the contrary, was designed for the purpose of requiring the Plaintiffs, and other railroad corporations, to carry out the various contracts, solemnly entered into with the State of Texas and under which contracts many valuable considerations moved from the State of Texas, and its People, to the Plaintiffs, and other railroad corporations, which contracts and considerations are fully set forth in the first amended answer of these Defendants.

"These Defendants believe, and therefore aver, that the Constitution and laws of the United States do not require the wholesale breaches of faith and repudiation of contract obligations such as are proposed by the Plaintiffs herein, and that the Interstate Commerce Commission had no intention to, and did not attempt to, require the same by its order of July 7th, 1916, and that if such Commission had such intention and made such attempt the same was void as in excess of its power. These Defendants furthermore believe, and therefore, aver that if the relief prayed for by Plaintiffs should be granted this Court, in the exercise of its equity powers, would thereby justify, ratify and approve the repudiation of such charter, and contract obligations of the Plaintiffs, and because of this, and because of the fact that the Plaintiffs have not offered to return and do not propose to return any of the benefits and valuable considerations acquired by them under such charters and contracts but, on the contrary, propose to retain all such benefits and considerations, the Original and Supplemental Bills show no equity and no grounds for such relief, and the same should be dismissed and for such relief these Defendants pray.

"Further replying to the allegations contained in Paragraph Number 'IV' of said Supplemental Bill these Defendants say that the Defendant B. F. Looney, Attorney General of Texas, has not threatened to, and will not, institute any manner of prosecutions against the Plaintiffs except such as may be authorized by the laws of the

United States and by such laws of the State of Texas as are in conformity with the Constitution and laws of the United States, and has not threatened to and will not take any action which will be designed to, or in any way have the effect of, ousting this Court of such jurisdiction as it may have.

"Replying to that portion of said Paragraph 'IV' which reads as follows: That the purpose of said Defendant, Looney, in filing such forfeiture suits, obtaining the appointment of Receivers, etc.,
380 among others would be to destroy the rights of plaintiffs in this case, and deprive them of their right to act under the said orders of the Interstate Commerce Commission, and under the Constitution and Laws of the United States, by among other things causing the Receivers, who may be so appointed, when they get possession of the properties of the plaintiffs to charge, between Texas and Shreveport, Louisiana, the rates heretofore fixed and named by the Railroad Commission of Texas, in lieu of these authorized by the said orders of the Interstate Commerce Commission and the Constitution and Laws of the United States, and thereby in large part destroy the cause of action herein of plaintiffs.

"Further replying to said Paragraph Number 'IV' these Defendants say that it is not only the 'theory' of B. F. Looney, Attorney General, that such discrimination, if any, as may have existed, or does exist, against Shreveport, Louisiana, can lawfully, and in conformity with the order of the Interstate Commerce Commission, be removed by the Plaintiffs by alteration to that end,—at an expense which would be very slight as compared with the many millions of dollars proposed to be imposed by the Plaintiffs upon the producing, consuming and trading public of Texas, but that the same is an actual fact as will be made to appear upon the hearing hereof. And in this connection it is shown to the Court that the traffic between Shreveport and all points in Texas is much less than 1% of the intrastate traffic in Texas of the Plaintiffs and that where the alterations of rates, etc., on such interstate traffic would cost the Plaintiffs $1.00 the imposition of the rates and regulations now proposed by the Plaintiff upon intrastate traffic would cost the public many hundreds of dollars. And in view of this fact, and in view of the further fact of the tremendous increase in Plaintiffs' revenues since the filing of this suit,—which increase would have occurred in large part under the rates and regulations for intrastate traffic prescribed by the Railroad Commission of Texas,—and in view of the fact, as already stated, that the Interstate Commerce Commission has reopened the entire proceedings out of which its order of July 7th, 1916, grew,—thereby expressing doubt as to the justice and legality of said order,—the restraining order heretofore granted herein should be dissolved and the prayed for a temporary injunction should be denied.

"And replying to that portion of said Paragraph Number 'IV' which undertakes to show that the alteration of the rates and
381 regulations on interstate traffic between Texas Points and Shreveport would in turn cause alterations in other interstate rates thereby causing further losses, these Defendants especially deny all such allegations, and say, further that the same are wholly con-

jectural, remote and wholly insufficient to show equity. And in this connection it is shown to the Court that there is nothing in the Original or Supplemental Bills or in the Record before the Interstate Commerce Commission to indicate such a similarity of transportation and other relevant conditions as would entitle Vicksburg, Mississippi, or other points, to the same or similar rates and regulations as may be applied to traffic to and from Shreveport, Louisiana, and, on the contrary, the Record, and the rulings of the Commission manifested therein negative any such similarity of conditions. Furthermore, the rates and conditions with respect to traffic between Texas Points and points other than Shreveport, Louisiana, as expressly ruled by the Commission, were not in issue, and were not investigated and the imaginings of the Plaintiff with respect thereto are vain, visionary and wholly abstract, at least, until such rates shall become and issue in some future proceedings.

"Further replying to the concluding sentence of said Paragraph IV' these Defendants say that Plaintiffs are not entitled to charge rates on traffic between points within Texas higher than those prescribed therefore, under the laws of Texas until it shall have been made to appear to, and decreed by, some court of competent jurisdiction that such Texas prescribed rates are unreasonably low, and this has not been done, and since the matters pertaining to such an issue cannot be adequately investigated by this Court until the trial on the merits the restraining order heretofore issued should be dissolved and the prayer for a temporary injunction should be denied and especially so in view of the fact that the Railroad Commission of Texas has duly allowed Plaintiffs substantial increases in rates on a large and substantial portion of their intrastate traffic over rates theretofore prescribed.

V.

"The allegations of fact made in Paragraph Number 'V' of said Supplemental Bill of Complaint are admitted, but the innuendo therein contained is denied. And in this connection these Defendants say that the Railroad Commission of Texas has no intention of reinstating said Circular 5060, or of making any similar or-
382 der, but if, in the future, it is found that any increase or decrease of intrastate rates, in whole or part, is demanded by the relevant facts and conditions the same will be made by the Railroad Commission of Texas accordingly as justice may dictate.

VI.

"Wherefore, these Defendants pray that Plaintiffs be denied all relief prayed by reason of any and all of the allegations contained in their Original and Supplemental Bills of Complaint, that the restraining order heretofore granted in this cause be dissolved, and for such other relief, general and special to which Defendants may be entitled."

383 *Defendants' Brief.*

Plaintiffs introduced and read in evidence a portion of the Brief filed in Equity 295, by Defendand Looney at New Orleans, April 4th, 1917, which reads as follows:

If it be thought that the granting of affirmative relief, of any kind is necessary at this time we submit that the real status quo would and should be preserved by denying plaintiffs' application for a temporary injunction and by granting the prayers of these defendants and of certain intervenors suspending the operation—in whole or in part—of the order of the Interstate Commerce Commission pending either the trial of the cause upon its merits or pending the final action of the Interstate Commerce Commission upon the application for rehearing, or for such other time as the court may deem proper, and, if thought necessary, suspending also Texas Lines' (Fonda) Tariff 2-B. All necessary parties are before the court; the pleadings present the issues and prayers; and that the court has full power to grant this relief is evident from the provision of the Act to Regulate Commerce.

384 *Petition Filed With Interstate Commerce Commission March 8th, 1911, by Railroad Commission of Louisiana.*

The Plaintiffs introduced and read in evidence the original Petition filed March 8th, 1911, with the Interstate Commerce Commission by the Railroad Commission of Louisiana, which Petition reads as follows:

"Before the Interstate Commerce Commission.

"J. J. MEREDITH, SHELBY TAYLOR and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana, Complainants,

vs.

"ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS; Burrs Ferry, Browndel & Chester Railway Company; Eastern Texas Railroad Company; Texas & Pacific Railway Company; Gulf, Colorado & Santa Fe Railway Company; Houston & Shreveport Railroad Company; Houston, East and West Texas Railway Company; Texas & New Orleans Railroad Company; The Missouri, Kansas & Texas Railway Company of Texas; Texarkana & Ft. Smith Railway Company; Kansas City Southern Railway Company; Texas & Gulf Railway Company; Marshall & East Texas Railway Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Texas Southeastern Railroad Company; Caro Northern Railway Company; Nacogdoches & Southeastern Railroad Company; International & Great Northern Railroad Company and Thomas J. Freeman, Receiver Thereof; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railroad Company; Jefferson & Northwestern Railway Company; Gulf & Interstate Railway Company of Texas; Galveston, Harrisburg & San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; Trinity & Brazos Valley Railway Company, and Texas State Railway Company, Defendants.

Petition.

"The petition of the above named complainants respectfully shows:

I.

"That complainants are members of, and constitute, the Railroad Commission of Louisiana, duly created, organized and now
385 existing under the constitution and laws of the State of Louisiana; that by the statute of said State, Act No. 195, of the Acts of the General Assembly of 1906, and by the Act of Congress entitled, 'An Act to Regulate Commerce,' as amended, complainants are authorized to bring this petition before the Interstate Commerce Commission, and being so authorized, bring this, their complaint, on behalf of the State of Louisiana, and various citizens thereof, as hereinafter set forth.

II.

"That the defendants above named are common carriers engaged in the transportation of passengers and property by continuous car-

riage or shipment, wholly by railroad, between points in the State of Texas and Louisiana and points in other States of the United States, and particularly between Shreveport, in the State of Louisiana, and various points in the State of Texas, as their respective lines may run, and that as such common carriers said defendants are subject to the provisions of the Act to regulate commerce, approved February 4, 1887, and all Acts amendatory thereof or supplementary thereto.

III.

That various merchants, manufacturers, jobbers and other residing at said Shreveport are shippers of various classes and commodities from said City of Shreveport into the State of Texas for delivery by defendants to various consignees in said State, and are also consignees of various articles of freight shipped from various points in the State of Texas over the lines of the Defendants for delivery at said Shreveport. The various articles so transported in interstate commerce are embraced in the various classes of freight as described in Western Classification No. 49, I. C. C. No. 7, supplements thereto or reissues thereof, and exceptions to said Classification as contained in S. W. L. Classification Exceptions and Rules—Circular No. 1-A, Leland's I. C. C. 762, Tucker's I. C. C. 236, supplements thereto or reissues thereof, and the following list of commodities: Agricultural implements (Item 1); hand implements; bagging and ties (straight or mixed); beer; brick; common; candy, L. C. L.; canned fruits and vegetables; canned goods (Item 2); cotton gins and compresses (Item 3); cotton seed cake and meal (straight or mixed); cotton seed hulls; cotton seed;
386 apples; apples, in boxes or barrels, L. C. L.; peaches; peaches, in boxes or crates, L. C. L.; cabbage; poratoes; vegetables taking Class 'C,' in carloads; fruits and vegetables taking fourth class, L. C. L.; fruit, tropical; corn; corn, L. C. L.; hay; hay, L. C. L.; handles, wooden, L. C. L. (Item 4); hides, dry; hides, green; hides, dry, in bales or bundles, L. C. L.; hides, green, in bundles, L. C. L.; iron and steel articles (Item 5); iron beams, columns and girders; pig iron; pipe, cast, couplings and connections; roofing and sheet iron (Item 6); wire and nails (Item 7); junk (scrap iron), C. L.; junk (scrap iron), L. C. L.; leather (Item 8); liquors (Item 9); paper (Item 10); peanuts; peanuts (in sacks), L. C. L.; salts, bleaching soda, lye and potash; sand and gravel; sugar and molasses; sugar and molasses, L. C. L.; tin articles (Item 11); vehicles, passenger, boxed or crated, L. C. L.; wool in grease, in sacks; wool in grease, in handed sacks; wool in grease, in bales. (See note.) All persons shipping between said points in Texas and said Shreveport are compelled to use the lines of the defendants in order to obtain transportation between said points. For many years the defendants have maintained over their individual lines, and in connection with each other, through routes of transportation between said Shreveport and said Texas points, and through rates applicable thereon; said rates now in effect are greatly in excess of former rates. The various merchants, manufacturers, jobbers and shippers doing

business at Shreveport are largely dependent for market upon the territory lying within eastern Texas, and there meet in competition articles manufacturered within, and outside of, the State of Texas and shipped or reshipped from various points in the State of Texas, to such competitive points. The defendants now charge, collect and receive for transportation, from said distributing points in Texas to said competitive points, rates which are much less, by any method of comparison, than rates now exacted by defendants for transportation of similar articles, involving a less service, between Shreveport and same destinations.

IV.

"That the defendants now exact, and for some time past have exacted, for the transportation of the various classes and commodities between Shreveport and various destinations on their lines in the State of Texas, rates that are unjust and unreasonable, 387 that are und-ly prejudicial and discriminatory, and that are higher for the shorter than the longer distance, thereby violating sections 1, 2, 3 and 4 of the Act to regulate commerce. Attached hereto as 'Exhibit A' is a table showing the rates applied by defendants herein for the transportation of the various classes and commodities mentioned in paragraph III hereof, between Shreveport and various competitive points therein named, and between various Texas points of an equal distance; said 'Exhibit A' is made part hereof as fully as though set out at length herein. The said rates between said Shreveport and said competitive points are so unjust, unreasonable, and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates, would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas. As a result of said unlawful rates, Texas competitors of said Shreveport shippers and consignees are given an undue advantage in said competitive territory in said eastern Texas.

V.

"That the defendants, Houston East & West Texas Railway Company; Houston & Shreveport Railroad Company; Jefferson & Northwestern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; Marshall & East Texas Railway Company; St. Louis Southwestern Railway Company of Texas; St. Louis Southwestern Railway Company; Gulf, Colorado & Santa Fe Railway Company; Texas & Gulf Railway Company; Texas & Pacific Railway Company; Texarkana & Ft. Smith Railway Company; Kansas City Southern Railway Company; and Timpson & Henderson Railway Company, charge, collect and receive for the transportation of cotton, in bales, from the points named in items 67 to 78, inclusive, in S. W. L. Tariff 43-D, Leland's I. C. C. 784, to said Shreveport, the rates named in said items; that the defendants have failed to estab-

lish through rates from all stations, named in 'Exhibit A' attached hereto, other than the stations named in said items in said S. W. L. Tariff 43-D, for the transportation of cotton, in bales, to said Shreveport, and that from all such points to said Shreveport, the rates are the lowest combination of locals on the points named in
388 said items 67 to 78, inclusive, in S. W. L. Tariff 43-D, Leland's I. C. C. 784; and that all such through and combination rates for the transportation of cotton, in bales, from all points on the lines of the defendants, named in 'Exhibit A,' to said Shreveport, are unjust, unreasonable, prohibitive, unduly discriminatory and prejudicial and in violation of sections 1, 2 and 3 of the Act to regulate commerce.

"That the defendants named in Paragraph V have failed, neglected and refused to provide in their lawful tariffs, rules and regulations for the concentration and compression of cotton, in bales, at said Shreveport, while contemporaneously providing reasonable rules and regulations for such services in connection with transportation from said points named in 'Exhibit A,' to points in Texas competitive to said Shreveport; that such failure, neglect and refusal is unreasonable, unjust, unduly discriminatory, and unduly prejudicial to said Shreveport and persons there doing business, who desire concentration and compression privileges at said Shreveport, and is unduly preferential to competing points in Texas and to shippers there located; and that such failure, neglect and refusal of said defendants is in violation of sections 1, 2 and 3 of the Act to regulate commerce, as amended.

"Complainants bring this complaint before the Interstate Commerce Commission, and pray that an answer be required from each of the defendants, and that after a full hearing and due investigation, said Interstate Commerce Commission will, by proper order, require the defendants to cease and desist from the aforesaid violations of the Act to regulate commerce; and will, by further order, prescribe on all the various classes and commodities referred to in Paragraph III hereof, just and reasonable rates between said Shreveport and the various points named in said 'Exhibit A' upon the lines of defendants in said eastern Texas; and that, by further order, said Commission will prescribe just and reasonable rates for the transportation by defendants named in Paragraph V, of cotton, in bales, from all points named in said 'Exhibit A,' to said Shreveport, with reasonable rules and regulations applicable to the concentration and compression of such cotton at said Shreveport.

"Complainants further pray for such other and further relief as to the said Interstate Commerce Commission may seem meet and proper in the premises."

389 *Report of Interstate Commerce Commission of Date January 16, 1912, Entered in I. C. C. No. 3918.*

(23 I. C. C., 31.)

The Plaintiffs introduced and read in evidence the Report of the Interstate Commerce Commission entered on January 16, 1912, in

Cause No. 3918, Railroad Commission of Louisiana vs. St. Louis Southwestern Railway Company, et al., which Report reads as follows:

"LANE, *Commissioner:*

"This proceeding places in issue the right of interstate carriers to discriminate in favor of state traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation reference is made to the appendix of this report.

"The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that state for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas; and (2) To end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas state traffic and against similar traffic between Louisiana and Texas.

"The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the railroad commission of Texas to effect the discrimination here involved.

390 Policy of the Texas Commission.

"The railroad commission of Texas, while not made a party to this proceeding, was notified of the hearing but was not represented thereat. The position which it takes, however, appears from the following letter which was incorporated in the record:

Austin, Texas, September 12, 1911.

Mr. H. B. Pitts, Secy. Progressive League, Marshall, Texas.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th inst. with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload

rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover. For the local rates to be now reduced from Shreveport to Texas points would tend to counteract the effect of the commission's action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours, respectfully,

ALLISON MAYFIELD, *Chairman.*

"This letter supports on the one hand the theory of the Louisiana Commission that the Texas Commission is acting in loco parentis to the jobbing interests of Texas, and on the other hand supports the theory of some of the carriers justifying the higher local rates out of Shreveport upon the ground that the through rate from point
391 of origin in the north and east to Texas, when made up of the rate to Shreveport plus the local out of Shreveport, is not unreasonable. (See appendix.)

"This latter contention has been made before the Commission at various times, and we have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low inbound rates. See Commercial Club of Omaha v. C., R. I. & P. Ry. Co., 6 I. C. C., 675; Daniels v. C., R. I. & P. Ry. Co., 6 I. C. C., 458; Eau Claire Board of Trade case, 5 I C. C., 293; Savannah Bureau of Freight & Transportation case, 8 I. C. C., 377.

"It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities, and limit their jobbing territory or expand it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions the discrimination in her favor is not undue. If however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it never should have been established and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads when unhampered by restrictive law attempted
392 successfully to prescribe and define the channels of commerce in such way as to favor certain localities, industries, and individuals. By the institution of this act Congress substituted

for the regulation of trade by common carriers the regulation of common carriers by the government in accordance with certain prescribed rules to be applied as to ascertained conditions. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the Commission exercised to correct any wrong which may exist in this situation.

"There appears to be little question as to the policy of the Texas commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that commission, which are quoted at length in the record, evidences that the Texas commission believed that the interstate carriers operating from the north and the east into Texas were pursuing a policy hostile to the development of that state. The Texas commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best subserve their own interests. Accordingly we find in the fifth annual report of that commission (page 5) the following:

To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the state a desirable population and furnishing employment to persons already in our midst and enhancing the taxable values of the state, and,
393 as a consequence, under wisely administered government, aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his state. Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing. * * * This commission has always had in mind the securing of the relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders.

"It was apparently not the prime desire of the Texas Commission

that rates within the state should be low, but rather that the interstate roads should not make rates so low upon commodities which Texas could supply to herself as could hinder the growth of her cities as manufacturing and distributing centers.

This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipment would make and maintain rates which would be fairly compensatory to them on such shipments this commission would do all in its power by its rates to secure them reasonable revenue on their railroad investments in this state, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates. (Fourth annual report, page 19.)

"Again we find the thought expressed in the letter from the chairman of the Texas state commission, quoted above, expressed in the report of that commission for 1896 (page 10), wherein it is said:

The commission did not feel disposed when it gave the notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory even though to do so would necessitate an increase in rates; yet as a condition precedent to anything like a general increase in state rates the commission was and is determined that the railroad companies shall show that they received reasonable compensation for transportation by them of interstate freights in order that it may be
394 seen by the commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed simply as roads operating in the state, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in less-than-carload quantities among the retailers. As the freight charges they receive on local less-than-carload shipments in the state added to what they receive in the division of through rates on carload shipments to the Texas jobber usually amount to more than they receive in the division of through rates on less-than-carload shipments from a jobber outside the state to a retailer in the state; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises, the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interest of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and cooperating with this commission to compel the other lines to act justly toward Texas interests, or, if adjustments can not be made

by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment.

"Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission. If interstate carriers were determined upon a long-haul policy which tended to make the people of Texas dependent upon the merchants and the manufacturers of other states the Texas commission frankly declared that it would meet this policy in such way as to save the interests of Texas from being at the mercy of these interstate carriers. At the time when these reports were written, from which quotation has been made, it is to be noted that the Interstate Commerce Commission lacked the powers which it now has; rates were unstable, competition was intense by means of rebates, and it is not unfair to say that there was no system of rate-making into the southwest upon which the Texas commission could rely. That inter-
395 state rates from northern points are not now so low as to cause the Texas commission to indulge the fears which possessed it in earlier years is made manifest by the fact that it sought before this Commission within two years the reduction of class rates from St. Louis. See R. R. Commission of Texas v. A., T. & S. F. Ry. Co., 20 I. C. C., 463. This was a proceeding in the interest of the consumers and not primarily for the protection of jobbing interests.

"That Texas, however, has not abandoned her purpose to retain so much of her trade within her own state as is possible is evidenced by what is known as the Texarkana rate adjustment. See Nineteenth Annual Report, R. R. Commission of Texas, page 263. By this adjustment the normal scale of rates applying upon a large number of articles, including carload and less-than-carload shipments of all articles which are, in carloads, subject to fifth class and class A, B, C, D, and E rates, was reduced by 20 per cent: 1. Between points on the Texas & Pacific Railway and the Denison & Pacific Suburban Railway east of and including Denison, Sherman, and Dallas, but not from Texarkana, Waskom, and intermediate points on the Texas & Pacific Railway. 2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom, and intermediate points on the Missouri, Kansas & Texas Railway of Texas. 3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano, and Dallas, and north of and including Tyler, but not from Texarkana.

"Then follows this significant language:

"'Ruling. Rates provided in this adjustment are not available on shipments to or from Texarkana.'

"Thus the interior cities of Texas were protected against what was doubtless deemed the unfair competition of Texarkana, a border city, and other similarly situated points.

"One illustration of the policy pursued by the Texas commis-

sion by which it is claimed advantage is given to Texas cities
396 as against Shreveport is in the matter of the concentration of cotton. We are asked to establish concentration rules at Shreveport upon Texas cotton. The record discloses extensive correspondence upon this question between the railroads and the Texas commission, a portion of which is here given.

"The Honorable Railroad Commission of Texas, Austin, Tex.

"GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

"We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the railroad commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

"Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

"Yours truly,

"J. R. CHRISTIAN, *G. F. A.*

"Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian as follows:

'Referring to your letter of September 15th, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the establishment of such an arrangement would not meet with the approval of this commission.'

"The policy of the Texas commission is, moreover, not without opposition within that state. Galveston, which enjoys low water rates, claims that for this reason she is the object of discrimination, a differential having been placed against distribution from that city.

The Galveston Commercial Association has brought suit
397 against the Texas railroad commission complaining of this condition. In that suit Galveston has been successful in the lower court, and it was stated at the hearing in this case that if the Supreme Court sustained the lower court it would probably mean a complete readjustment of rates in Texas; that, in fact, it would be necessary for the Texas railroad commission to make its tariffs upon an entirely different plan, and that the railroads would be prepared to suggest new tariffs to the Texas commission which would alter the relation, not only between Galveston and other Texas cities, but between Shreveport and Texas cities.

"The Problem Raised.

"The petition of the complainants is that this Commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

"With this petition we can not comply unless such power has been granted under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a state-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect state-made rates upon state traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a state commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

"Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate
398 carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?

"This is an appeal to the powers lodged in this Commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual system of government. Congress asserts its exclusive dominion over interstate commerce; the state asserts its absolute control over state commerce. The state for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers upon state traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the state, and interstate commerce suffers a corresponding disadvantage. May this Commission end such discrimination by saying to the interstate carrier: "You may not distinguish between state and interstate traffic transported under similar conditions. If the rates prescribed for you by state authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the state, to so adjust your rates that justice will be done between communities regardless of the invisible state line which divides them." To which

we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the national government, and that the Congress has appropriately exercised this power in the provisions of the act to regulate commerce touching discrimination.

399 "Power and Policy of Congress.

"The theory of our constitution is that a state may not live unto itself alone, either politically or commercially. Under the articles of confederation the several states reserved to themselves certain powers which in their exercise made necessary "a more perfect union." This was established under the constitution, in which, as an outgrowth of experience, it was provided that Congress should have the power "to regulate commerce with foreign nations and among the several states." It is unnecessary to trace the growth and expansion of the national power under this provision of the organic law. With almost each decade some problem has arisen which has brought from the Supreme Court of the United States a fuller interpretation of this power granted to Congress, and underneath each one of these decisions may be found the fundamental doctrine of governmental necessity. The power granted to regulate a commerce by wagon and the sailing ship has been found adequate for the necessities of a national life to which the railway and the telegraph are essential. Under the protection and authority of the federal government our commerce has known no state lines, we have enjoyed freedom of trade between the people of the various states, and our railroad systems have been constructed to convey a national commerce. While chartered by the states they have become the interstate highways of the United States. They are the roads of the whole people and not of any part or section of the people. Congress has commanded that all carriers which engage in interstate commerce shall be linked together as through routes; that they shall provide reasonable facilities for operating such routes; that they shall establish and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations, or practices may be prescribed (section 1); that they shall construct switch connections with any lateral, branch line of railroad, or the private sidetrack of any shipper tendering
400 interstate traffic for transportation (section 1); that they shall not discriminate between persons (section 2), or between connecting lines (section 3); that in time of war or threatened war preference shall be given to military traffic; that the books and files of such carriers shall be open to the inspection of the Federal Commission (section 20); that the Commission may have power to prescribe just and reasonable rates, classifications, regulations, and practices; fix the division of joint rates in certain cases (section 15); prescribe a uniform system of accounts and the manner of keeping the same (section 20); and that the initial carrier shall be responsible for loss or damage to property caused by it or by other carriers over whose lines such property may pass (section 20).

"By all these provisions of the law, as by others, Congress has

clearly manifested its purpose to unite our railroads into a national system. The law acts only on those which do an interstate business; but in the conveying of property destined from a point in one state to a point in another this brings within the control of Congress all such carriers as do not exclude themselves from participating in such traffic.

Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority so far as to compel it to respect the rules of such commerce lawfully established by Congress. (Mr. Justice Harlan, Northern Securities case, 193 U. S., 197.)

While with reference to some of them (instrumentalities of commerce), which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require uniformity of regulation affecting alike all the states, the power of Congress is exclusive. (Mr. Justice Field in Gloucester Ferry case, 114 U. S., 203, 204.)

"Construction of the Law.

"The power of Congress being unquestioned, we find that as carriers of interstate commerce the defendants under the act (Section 3) may not give any undue or unreasonable preference or
401 advantage to any locality or any particular description of traffic in any respect whatsoever, or subject any locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly discriminate so as to prefer a point in one state as against the other? If this is the meaning of the section, the law has recognized that an interstate carrier may *may* properly discriminate within a state as against interstate commerce. Such construction is, however, entirely inconsistent with the letter of the statute and with its purpose. A clearer and fairer, and to our minds the only reasonable reading of the law, is one which credits Congress with the intention of stopping all undue discrimination by interstate carriers. It may be said without exaggeration that it is the paramount duty of interstate carriers under this act to avoid discrimination. The penalties placed against any course of policy leading to such result are severe. There can be no jurisdiction for granting to one locality an advantage over another not arising out of difference in transportation conditions. The orders of a state commission enforcing a discrimination against interstate commerce are not acceptable under the law.

Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates

a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, Pullman Co. v. Kansas, 216 U. S., 56, 65.)

No state by the exercise of, or by the refusal to exercise, any or all of its powers may substantially discriminate or directly regulate interstate commerce or the right to carry it on. (Mr. Justice McKenna in Oklahoma v. Kansas Natural Gas Co., 221 U. S., 261.)

402 We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate. If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, Southern Ry. Co. v. United States, 222 U. S., 20, 26.)

"If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

"Language of the Act.

"It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.

403 "This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally." Mondou v. N. Y., N. H. & H. R. R. Co., 223 U. S., 1, decided January 15, 1912. It is not merely the commerce which is confined to a single state which is state commerce, but that which "does not affect other states." The state goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that state rates shall be reasonable or that rebates upon state traffic shall be unlawful or that discrimination between localities within the state shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the state, which is recognized and protected by the language of the act quoted.

"But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers
404 may so discriminate because of the orders of a state commission is to admit that a state may limit and prescribe the flow of commerce between the states.

"And if one state may exercise its power of fixing rates so as to prefer its own communities all states may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the constitution when each state sought to devise methods by which its commerce could be localized. How utterly incongruous the result if the interstate carriers of Ohio should be allowed to makes rates within that state which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburgh; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

"Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom

report of 1886 out of which grew the act to regulate commerce. "While the decisions of the United States Supreme Court," says this report, "may not perhaps afford as conclusive an answer to this question (What is interstate commerce?) as to the preceding one, we believe they indicate very clearly what the view of that tribunal will be when it is called upon to more closely draw the line between that commerce which is wholly subject to state authority and that which is exclusively under the jurisdiction of Congress."

"The report quotes this language from Gibbons v. Ogden, 9 Wheat., 1, 194, 195:

It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on be-
405 tween man and man in a state, or between different parts of the same state, and which does *not extend to or affect other states.* (The italics are those of the report.) * * * But in regulating commerce with foreign nations the power of Congress *does not stop* at the *jurisdictional lines* of the several states. It would be a very *useless power* if it could not *pass those lines.* * * * If Congress has the power to regulate it, that power must be exercised *wherever the subject exists.* If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of congress may be exercised within a state. *This principle is, if possible, still more clear when applied to commerce "among the several states."* * * * The power of Congress, then, whatever it may be, must be exercised *within the territorial jurisdiction* of the several states.

"After quoting other decisions, the report continues:

There has been some dispute as to the extent to which the states may go in imposing regulations upon the instrumentalities of commerce which may indirectly affect interstate commerce until Congress sees fit to prescribe a uniform plan of regulation.

"Then is cited with approval language from the decision in Hall v. De Cuir, 95 U. S., 485, which involved an act of the state of Louisiana prohibiting discrimination by common carriers of passengers between persons of different race or color.

The act was declared to be an interference with interstate commerce, even if construed to be limited to that part of the carriage within the state. Upon this point the court said: "While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet just such a case that the commercial clause in the constitution was adopted.

406 Again the report quotes from Brown v. Houston, 114 U. S., 622.

In short, it may be laid down as the settled doctrine of this court at this day that a state can no more regulate or impede commerce

among the several states than it can regulate or impede commerce with foreign nations.

The committee comes to certain conclusions which it says have been conclusively established from the decisions to which reference has been made. Among these conclusions is this:

Commerce among the states includes the transportation of persons and property from a place in one state to a place in another state. Interstate commerce is all commerce that concerns more states than one, and embraces all transportation which begins in one state and ends in or passes through another state.

In presenting the act to regulate commerce to the Senate the Cullom Committee said:

The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers.

In view of this internal evidence that Congress was not only officially aware, but that its attention had been directly called to those decisions of the Supreme Court touching upon the boundary line between federal and state contral, it certainly may not be truthfully said that Congress intended that its own act should be set at naught by an enterstate carrier upon the ground that the discrimination effected against interstate commerce arose out of the rates and practices in effect on commerce wholly within a state.

407 An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey orders of a state commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the state of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rates of the Texas commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a

policy, even under the state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce "among the states" against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction on one sovereignty or the other must give away. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligations and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead.

Conclusions.

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the fol-
408 lowing table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance, miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Texas	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Texas	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Texas	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Texas	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Texas	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Texas	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Texas	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Texas	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Texas	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Texas	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Texas	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Texas	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Texas	101.5	46	43	41	39	28	29	26	23	17	14
Grand Saline, Texas	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Texas	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Texas	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Texas	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Texas	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Texas	161.9	61	56	51	49	35	36	33	29	20	16
Forney, Texas	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Texas	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Texas	182.8	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance, miles.	Class rates in cents per 100 lbs.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Texas	42.8	25	25	21	19	17	18	15	12	10	8
Tenaha, Texas	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Texas	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Texas	72.3	36	32	30	28	23	23	20	17	14	11
400 Appleby, Texas	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Texas	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Texas	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Texas	112.5	48	45	41	39	28	29	26	23	17	14
Banova, Texas	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Texas	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Texas	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Texas	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Texas	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Texas	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Texas	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Texas	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Texas	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Texas	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Texas	203.4	71	65	58	56	40	41	37	31	22	17
Paull, Texas	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Texas	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Texas	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish, and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

410 (7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

Accompanying said report, as copied above, were several concurring and dissenting opinions and also some statistical tables: the same are not copied here in full for the reason that they are not at this time believed to be material to any issue presented: it is agreed, however, that the same as published in 23 I. C. C., 31, et seq., may be referred to and used by either party in the briefs and arguments of the case before the Supreme Court.

411 *Order of the Interstate Commerce Commission Entered on the 16th Day of January, 1912, in Cause No. 3918.*

The plaintiffs introduced and read in evidence the order of the Interstate Commerce Commission entered in said cause No. 3918 on the 16th day of January, 1912, which order reads as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is ordered, That defendants, The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas hereinafter mentioned on their respective lines, as the Commission in said report finds such rates to be unjust and unreasonable.

"It is further ordered, That defendant, The Texas & Pacific Railway Company, be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to
the below-named points in Texas, class rates which shall
412 not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit: (Rates found to be reasonable in the report dated the 16th day of January, 1912, set out above inserted here).

"It is further ordered, That defendants, the Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Com-

pany, be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit: (Rates found to be reasonable in the report dated the 16th day of January, 1912, set out above inserted here).

"It is further ordered, That defendant, The Texas & Pacific Railway Company, be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Texas, and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Texas, toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

"It is further ordered, That defendants, The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any
413 higher rates for the transportation of any article from Shreveport, La., to Houston, Texas, and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Texas, toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

"And it is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the State of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants."

414 *Supplemental Petition Filed With Interstate Commerce Commission by the Railroad Commissioners of Louisiana in Cause No.* 3918.

The Plaintiffs introduced and read in evidence the "Supplemental Petition" filed by the Railroad Commissioners of Louisiana in Cause No. 3918, which Supplemental Petition reads as follows:

"The supplemental petition of the above named complainants respectfully shows:

I.

"That heretofore, to-wit, on March 8, 1911, complainants herein filed their petition against the above named defendants, complaining of rates and their adjustment, between points in the State of Louisiana and points in the State of Texas, said petition thereafter being served on the various defendants named therein. To this petition various of the above named defendants have filed answers, which answers have been served upon the complainants herein.

"In various of said answers, the defendants so answering have alleged that the rates between points in the State of Texas, complained of in said petition as discriminatory, were made by the Railroad Commission of Texas and are unreasonably low and unremunerative.

"The various carriers so answering further allege that for various reasons they have failed to contest the lawfulness of such rates in any judicial proceeding.

II.

"In view of said allegations in the answers above referred to, filed in this proceeding, and to the end that the information possessed by the Railroad Commission of Texas may be enjoyed by your Honorable Commission, and to the end that the latter Commission may be fully advised, complainants herein respectfully suggest to this Honorable Commission that the Railroad Commission of Texas should be made a party hereto, and a copy of the petition herein and of this supplemental petition, together with copies of the various answers filed herein, should be served upon said Railroad Commission of Texas, with notice thereto attached that said Commission may file such pleadings and take such action in the premises as it may deem proper.

Wherefore your complainants pray that the Interstate Commerce Commission will, by appropriate order duly served upon all the parties to this proceeding, make an order herein, notifying
415 the Railroad Commission of Texas of the pendency of these proceedings, granting unto said Commission permission to file such pleadings as it may deem proper, and also leave to appear at any and all hearings before the Interstate Commerce Commission, and to take such other and further action in regard to the subject matter as to said Commission may seem proper.

"Prayer is further made that such order be forthwith issued and served upon the said Commission, and that accompanying said order be a copy of this petition and supplemental petition, together with the various answers filed herein.

"These complainants herein adopting and renewing their allegations and prayer of the original petition, further pray that any and all orders necessary to remove the unlawful acts and practices complained of in the original petition may be made to run against the defendants and in view of the answers herein filed, likewise against the Railroad Commission of Texas and all parties who may act under

the authority of the said Railroad Commission of Texas, in so far as may be necessary to uphold the authority and jurisdiction of the Interstate Commerce Commission in granting relief in this proceeding."

416 *Report of the Interstate Commerce Commission Upon Supplemental Hearing.*

(34 I. C. C., 472.)

The plaintiffs introduced and read in evidence the report of the Interstate Commerce Commission made in cause No. 3982, styled J. J. Meredith et al., constituting the Railroad Commission of Louisiana vs. St. Louis Southwestern Railway Company et al., 34 I. C. C. 472, which report reads as follows:

"Our first report and order in this proceeding were made March 11, 1912, in 23 I. C. C., 31. From that order the defendant carriers appealed to the Commerce Court, where it was upheld on April 25, 1913, in 205 Fed., 380, and the latter decision was affirmed by the Supreme Court of the United States on June 8, 1914, in Houston & Texas Ry. v. United States, 234 U. S., 342.

The order, save in so far as it required the establishment of new rules to govern the concentration of cotton moving in interstate commerce, ran only against three defendants, Texas & Pacific Railway Company, Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company. It required the establishment by them of specified class rates on shipments by their lines from Shreveport, La., to specified destinations in Texas, and those rates were established and made effective July 1, 1912. It further required that these three defendants "abstain from exacting any higher rates for the transportation of any article" from Shreveport to Dallas, Texas, and points intermediate via the line of the Texas & Pacific, and from Shreveport to Houston, Texas, and points intermediate via the line of the Houston, East & West Texas and the Houston & Shreveport, "than are contemporaneously exacted for the transportation of such article from Dallas or Houston for an equal distance toward said Shreveport." It was to this latter portion of the
417 order that the carriers directed their opposition on the final appeal. Pending decision of the appeal the effective date of this portion of the order, which directed removal of the discriminatory variance between the State and interstate rate structures on those three lines from and toward Shreveport, was successively postponed until August 1, 1914.

The case again comes before us on a petition filed June 18, 1914, by the proper authorities of the State of Louisiana, praying a supplemental order. Thereupon, by order entered June 23, 1914, all the defendant carriers were required to show cause why such supplemental order should not issue. The order prayed for would require: (1) The establishment of reasonable class rates from Shreveport, such as were previously prescribed over the lines of the three

defendants, to all points on the lines of all the defendants; and (2) the application of no higher rates upon all commodities from Shreveport to all points on the lines of all defendants than are contemporaneously maintained for like distances from any points on said lines eastbound to destinations in Texas. The petition alleges that no new or changed conditions have arisen since the first hearing and order; that the other defendant carriers will not establish a uniform scale of rates except upon such a supplemental order; and that as a result shippers over the three lines whose rates have been adjusted in conformity with the order of March 11, 1912, will have an undue advantage.

Such being the record, further hearing was had at Shreveport on October 27, 1914. Prior thereto petitioners gave notice that at such hearing they would offer evidence to support the grant of the following "specific relief":

"1. Rates established by the Commission on class, as well as commodity traffic, should apply 'between' on all shipments from or to Shreveport, La., to or from all points located on the lines of the respondents in the State of Texas.

418 2. The scale of class rates which this Commission found just and reasonable and ordered established by the respondents, Houston, East & West Texas Railway, Houston & Shreveport Railroad, and Texas & Pacific Railway, should be applied on all shipments taking class rates to or from Shreveport, from or to points located on the lines of all other respondents than those named in this paragraph.

3. Reasonable commodity rates should be applied on all commodities moving from points located on the lines of the respondents in the State of Texas to Shreveport, La., or from Shreveport to said Texas points, observing the class scale found reasonable by this Commission as a maximum.

4. Concentration of cotton from Texas points should be permitted at Shreveport, La., at rates no higher for the haul into concentration point than Texas competitors pay for similar distances, and rules and policies of concentration privileges at Shreveport should be the same as enjoyed by shippers of cotton in Texas at the concentrating points in said State.

5. Respondents should apply the rules and regulations of western classification now in effect on all shipments from or to points on the lines of the respondent in Texas or should apply Texas lines' classification on all shipments from or to Shreveport, La., to or from points on the lines of respondents in the State of Texas.

6. Rates, rules, and regulations covering the transportation of all carload and less-than-carload traffic, whether commodity or class rates, should be the same, distance considered, in all the territory lying east of a line drawn through Gainesville, Fort Worth, Waco, and thence with the Brazos River, whether moving wholly within the State of Texas on the lines of the respondents or from or to Shreveport, to or from such Texas points."

419 Commercial organization of Fort Worth, Texas, and Texarkana, Ark.-Texas, filed petitions of interventions. For

Fort Worth it was contended that any broadening of our orders herein would unduly discriminate against it. For Texarkana it was asked that any further relief for Shreveport should extend to Texarkana. Both petitions seek to enlarge the real issue in this supplemental proceeding and must be denied.

The Texas Railroad Commission was represented at the hearing but entered no appearance of record. During the hearing the petitioners moved that the Houston & Texas Central Railroad Company, the Texas Midland Railroad, and the San Antonio & Aransas Pass Railway Company be made parties to the proceeding, and each entered appearance of record and waived notice. Petitioners also moved that the so-called Frisco lines in Texas be made parties by their consent, but no appearance or waiver of notice was made by these lines.

The evidence upon supplemental hearing shows no material change in transportation conditions over the lines of defendants, either from or toward Shreveport, since this proceeding was first before us. Rules substantially similar to those in effect in Texas have been established at Shreveport to govern the concentration of Texas cotton. The three defendants affected by that part of our original order which relates to rates have complied therewith, and the Missouri, Kansas & Texas Railway Company of Texas has voluntarily established a similar basis of rates in both directions over its line east of Greenville, Texas, i. e., its Shreveport division. The other defendants continue in effect from Shreveport the same adjustment of rates which we found unreasonable and unjustly discriminatory in March, 1912. Their Shreveport to Texas class rates in many instances are the same as, and sometimes exceed, the rates found by this Commission in June, 1912, to be just, reasonable, and nondiscriminatory express rates for the same hauls. In re Express Rates, Practices, Accounts, and Revenues, 24 I. C. C., 380, and 28 I. C. C., 131. Of necessity it follows that now, as in 1912,
420 these carriers unlawfully and unduly prefer the cities of eastern Texas, and *mow*, as then, unjustly discriminate against Shreveport.

The prayer in the petition for supplemental order is that such order shall extend to the lines of the other defendants a structure of rates similar to that established on the lines of the three defendants by our order of March 11, 1912. This prayer is, however, much broadened in the statement of "specific relief" above set out and supported by petitioners' evidence upon supplemental hearing, at which petitioners stated of record that they sought a readjustment of rates not limited to any prescribed territory, and an order applying to all these defendants, governing all traffic to and from Shreveport and all points on their lines, and between all points on their lines on the local business; in other words, a readjustment over practically the whole of Texas.

From the inception of this proceeding its essence has been the discrimination between Shreveport and eastern Texas, as appears in our original report herein, 23 I. C. C., 31, at 33. This record contains nothing, except a tentative agreement between the parties,

upon which to go further and fix reasonable maximum rates, both class and commodity, effective over all the lines of these defendants throughout the great State of Texas. In line with our action of March 11, 1912, we shall confine our further order to the territory between Shreveport on the east and a line drawn through Gainesville, Fort Worth and Waco, Texas, thence via the Brazos River to the Gulf of Mexico, on the west. This western boundary is suggested in the petitioners' statement of "specific relief," and is fairly indicated in the record as the line up to which Shreveport should be protected. We shall refer to that part of Texas on and east of this line as eastern Texas. Limited to this territory we shall now deal with the specific relief sought.

421 *Class Rates.*

The class rates prescribed by this Commission from Shreveport to Texas points in 1912 were based on the mileage scale prescribed by the Texas commission for intrastate traffic. In our original report, supra, 23 I. C. C., 31, at 45, the Commission found that "the class rates of the Texas commission within the distances here involved are not too low." The Texas commission class rate scale "runs out" at 245 miles; that is, the scale for 245 miles applies on all hauls in excess thereof. Petitioners admit that the 245-mile scale does not return fair compensation to the carriers for hauls beyond that distance. They show a great similarity between the Texas commission scale up to 245 miles and the so-called Texas-Oklahoma scale prescribed in Corporation Commission of Oklahoma v. A. & S. Ry. Co., 26 I. C. C., 520. They suggest that at about 245 miles the Texas commission scale may well merge into the Texas-Oklahoma scale, and the latter be used for hauls in excess of 245 miles.

In so far as this record bears on the subject it indicates that as between Shreveport and eastern Texas the conditions of transportation are substantially similar to the conditions between Texas and Oklahoma. The Texas-Oklahoma scale applies on traffic between Oklahoma and points in eastern Texas located only a few miles west of Shreveport. Our conclusion is that to whatever extent this present petition demands the establishment of class rates on hauls beyond 245 miles the Texas scale should, at about that distance, merge into the Texas-Oklahoma scale.

Upon this basis we construct the following distance scale of class rates, as maxima.

Rates in cents per 100 pounds for single line application. By "single line" meant one line of railroad, or two or more lines of railroad under the same management and control.

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Distance (in miles).	1	2	3	4	5	A	B	C	D	E
10 and less	13	12	10	8	6	7	6	5	5	4
12 and over 10..	14	12	11	9	6	7	6	5	5	4
15 and over 12..	15	13	12	10	7	8	6	5	5	4
18 and over 15..	16	14	12	10	8	9	7	6	5	5

Distance (in miles).	1	2	3	4	5	A	B	C	D	E
21 and over 18..	17	15	13	11	9	10	8	6	6	5
24 and over 21..	18	16	14	12	10	11	9	7	6	5
27 and over 24..	19	17	15	13	11	12	10	8	7	6
30 and over 27..	20	18	16	14	12	13	11	9	7	6
33 and over 30..	21	19	17	15	13	14	12	10	8	6
36 and over 33..	22	20	18	16	14	15	13	10	8	7
39 and over 36..	23	21	19	17	15	16	14	11	9	7
42 and over 39..	24	22	20	18	16	17	14	11	9	7
45 and over 42..	25	23	21	19	17	18	15	12	10	8
48 and over 45..	26	24	22	20	17	18	15	12	10	8
51 and over 48..	27	25	23	21	18	19	16	13	11	8
54 and over 51..	28	26	24	22	18	19	16	13	11	9
57 and over 54..	29	27	25	23	19	20	17	14	12	9
60 and over 57..	30	28	26	24	19	20	17	14	12	9
63 and over 60..	31	28	26	24	20	21	18	15	13	10
66 and over 63..	32	29	27	25	20	21	18	15	13	10
69 and over 66..	33	30	28	26	21	22	19	16	13	10
72 and over 69..	34	31	29	27	21	22	19	16	13	10
75 and over 72..	35	32	30	28	22	23	20	17	14	11
78 and over 75..	36	33	31	29	22	23	20	17	14	11
81 and over 78..	37	34	32	30	23	24	21	18	14	11
84 and over 81..	38	35	33	30	23	24	21	18	14	11
87 and over 84..	39	36	34	31	24	25	22	19	15	12
90 and over 87..	40	37	35	32	24	25	22	19	15	12
93 and over 90..	41	38	35	32	25	26	23	20	16	13
96 and over 93..	42	39	36	33	25	26	23	20	16	13
99 and over 96..	43	40	37	34	26	27	24	21	16	13
102 and over 99..	44	41	38	35	26	27	24	21	16	13
105 and over 102..	45	42	39	36	27	28	25	22	17	14
108 and over 105..	46	43	40	37	27	28	25	22	17	14
111 and over 108..	47	44	40	38	28	29	26	23	17	14
114 and over 111..	48	45	41	39	28	29	26	23	17	14
117 and over 114..	49	46	42	40	29	30	27	24	18	15
120 and over 117..	50	47	43	41	29	30	27	24	18	15
124 and over 120..	51	47	43	41	30	31	28	25	18	15
128 and over 124..	52	48	44	42	30	31	28	25	18	15
132 and over 128..	53	49	45	43	31	32	29	25	18	15
136 and over 132..	54	50	45	43	31	32	29	26	19	16
140 and over 136..	55	51	46	44	32	33	30	26	19	16
144 and over 140..	56	52	47	45	32	33	30	26	19	16
148 and over 144..	57	53	48	46	33	34	31	27	19	16
152 and over 148..	58	54	49	47	33	34	31	27	19	16
156 and over 152..	59	55	50	48	34	35	32	27	20	16
160 and over 156..	60	56	51	49	34	35	32	28	20	16
164 and over 160..	61	56	51	49	35	36	33	28	20	16
168 and over 164..	62	57	51	49	35	36	33	28	20	16
172 and over 168..	63	58	52	50	36	37	34	29	20	16
176 and over 172..	64	59	53	51	36	37	34	29	21	16
180 and over 176..	65	60	54	52	37	38	35	29	21	16

Distance (in miles).	1	2	3	4	5	A	B	C	D	E
184 and over 180..	66	61	55	53	37	38	35	30	21	16
188 and over 184..	67	62	56	54	38	39	36	30	21	16
192 and over 188..	68	63	57	55	38	39	36	30	21	16
196 and over 192..	69	64	58	56	39	40	37	31	22	17
200 and over 196..	70	65	58	56	39	40	37	31	22	17
205 and over 200..	71	65	58	56	40	41	37	31	22	17
210 and over 205..	72	66	59	57	40	41	38	32	22	17
215 and over 210..	73	67	59	57	41	42	38	32	22	17
220 and over 215..	74	68	59	57	41	42	38	32	22	17

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225 and over 220..	75	69	59	57	42	43	39	33	23	17
230 and over 225..	76	70	60	58	42	43	39	33	23	17
235 and over 230..	77	70	60	58	43	44	39	33	23	17
240 and over 235..	78	71	60	58	43	44	40	34	23	18
245 and over 240..	79	71	61	58	43	45	40	34	23	19
250 and over 245..	80	72	62	58	43	45	40	34	24	19
260 and over 250..	82	73	63	59	44	45	40	34	24	19
270 and over 260..	85	74	64	60	44	46	41	35	25	20
280 and over 270..	87	75	65	60	44	46	41	35	25	20
290 and over 280..	88	77	66	61	45	47	42	36	25	20
300 and over 290..	89	78	67	61	45	47	42	36	26	20
320 and over 300..	94	82	70	62	47	48	44	37	27	21
340 and over 320..	98	85	72	63	49	50	46	38	29	23
360 and over 340..	98	85	72	64	49	50	46	38	30	25
380 and over 360..	102	88	74	65	50	51	47	39	31	26
400 and over 380..	102	88	74	66	50	51	47	39	31	26
450 and over 400..	106	91	76	66	52	53	49	40	32	28

For joint line application the rates shall be made by adding to the rates prescribed in the above table the following amounts, in cents per 100 pounds:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	8	7	6	5	4	4	4	3	2	1

By "joint line" is meant two or more lines of railroad under the same management and control.

When the sum of the rates prescribed for single line application is less than a joint rate made in accordance with the above instructions, the joint rate shall not exceed such sum of rates.

Rates so made not to exceed the following for distances not exceeding 450 miles:

Class:	1	2	3	4	5	A	B	C	D	E
Rates	106	91	76	66	52	53	49	40	32	28

An order will be issued directing defendants to establish and maintain rates no higher than those above found to be reasonable, where not already established, from Shreveport to points in eastern Texas, as defined in this report, and also from points in eastern Texas toward Shreveport.

424 *Classification.*

Shipments from Shreveport to Texas destinations are subject to the western classification. Shipments from Texas cities to the same Texas destinations are subject to the Texas classification. The petitioners contend that an equalization of the class rates per se will not remove existing unjust discrimination on class-rate traffic, because the Texas classification is more "liberal to the shipper" than is the western classification, and they ask that interstate shipments from Shreveport and eastern Texas intrastate shipments be made subject to one and the same classification.

The evidence on behalf of both petitioners and carriers bears out the contention that the Texas classification is, on many articles, more liberal to the shipper *that* is the western. Generally speaking, the minimum carload weights provided in the Texas classification are lower than in the western, the usual or standard being in the former 24,000 pounds as against 36,000 pounds in the latter.

Unquestionably the situation between Shreveport and its Texas competitors is such that unless the same classification applies unjust discrimination results. The western classification governs interstate transportation in the territory surrounding Shreveport, including transportation between Texas points and points in other states. In large part it has received the indorsement of this Commission. Western Classification case, 25 I. C. C., 442. Considering the finding already made that transportation conditions for the competitive hauls here involved are substantially similar, justice demands that the same classification shall apply to all, and consequently that the western classification shall govern on traffic via the lines of these defendants from points in eastern Texas toward Shreveport. The order herein will so provide.

425 *Commodity Rates.*

The petitioners have submitted many comparative statements showing that on a distance basis the commodity rates applying from Shreveport to eastern Texas are much higher than the Texas state rates on the same commodities to the same points. All of this accentuates what we found to be the situation in 1912. Among the articles on which Shreveport shows it thus suffers unjust discrimination are crude oil, hides and wool, common brick, window glass, tight barrels, wooden handles, hardware, agricultural implements, wholesale groceries, saddlery, vehicles, wholesale produce, and automobiles. As to these and many others the petitioners and carriers have, since the close of the hearing, compiled and submitted to the Commission an agreed set of commodity rates, constructed on a mileage scale. We are asked to name, by appropriate order of this Commission, specific rates on these many commodities, to govern their transportation between Shreveport and points in Texas, and practically throughout the entire State of Texas.

For the reasons already made clear we find ourselves unable to

comply with this request. We do not find in this record all that would be necessary to support such an order could we lawfully make it. Neither do we find evidence as to what the specific maximum commodity rates should be. The record does show, however, that Shreveport should be protected against unjust discrimination in favor of points in eastern Texas. As to that territory, our order will provide that the defendants shall cease and desist from charging higher rates upon any commodity from Shreveport into eastern Texas, as defined in this report, than are contemporaneously charged for the carriage of such commodity for an equal distance from points in eastern Texas toward Shreveport, and will further require that such commodity rates shall not exceed, distance considered, the corresponding class rates already named herein.

426 *Rates to Shreveport on East Texas Cotton.*

It has already been observed that the defendants now maintain at Shreveport, as to cotton from Texas points, concentration rules and practices substantially similar to the rules and practices which they maintain on Texas cotton at concentration points within eastern Texas. This, however, has not removed all the unjust discrimination from which Shreveport suffered and continues to suffer as a cotton concentration point.

Cotton from eastern Texas moves uncompressed into concentration points in that region on rates which, distance considered, are with few exceptions much lower than the rates on which such cotton moves into Shreveport for concentration. The inbound rates into Shreveport are higher, also, than the mileage scale governing the intrastate movement of uncompressed cotton into concentration points in Arkansas and Mississippi. In some cases they exceed the through rate from point of origin through Shreveport to final destination. The cotton factor at the concentration point customarily pays these inbound rates at the time of the inbound movement. Subsequently the compressed cotton moves from the concentration point to ultimate destination upon through rate from point of origin, and the inbound charges are then refunded to the factor. During the interim the Shreveport factor on the present rate adjustment has a larger portion of his capital tied up in paid expense bills, covering the inbound movement of his cotton, than have his eastern Texas competitors. We have already held that the conditions of the transportation here concerned are similar, and we now hold it constitutes unjust discrimination against Shreveport for these defendants to charge higher inbound rates on uncompressed cotton from eastern Texas to Shreveport for concentration there than they contemporaneously charge, distance considered, on uncompressed cotton to concentration points in eastern Texas.

427 An appropriate order will issue requiring the removal of this discrimination and the establishment for future use of rates to Shreveport on eastern Texas cotton for concentration no higher than defendants contemporaneously charge on a distance basis for

the transportation of cotton to concentration points in eastern Texas."

428 *Order of the Interstate Commerce Commission of Date June 17th, 1915, in Cause #3918.*

Plaintiffs introduced and read in evidence the order of the Interstate Commerce Commission, entered in Cause #3918, on the 17th day of June, 1917, which order reads as follows, to-wit:

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; TEXAS STATE RAILROAD; The Caro Northern Railway Company; Nacogdoches & Southeastern Railroad Company; Jefferson & Northwestern Railway Company; Gulf, Colorado & Santa Fe Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; Texarkana & Fort Smith Railway Company; The Kansas City Southern Railway Company; Moscow, Camden & San Augustine Railway Company; St. Louis Southwestern Railway Company of Texas; Eastern Texas Railroad Company; J. W. Robins, Receiver the Trinity & Brazos Valley Railway Company; Shreveport, Houston & Gulf Railroad Company; Houston & Shreveport Railroad Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Burr's Ferry, Browndel & Chester Railway Company; Groveton, Lufkin & Northern Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; The Galveston, Houston & Henderson Railway Company; The Timpson & Henderson Railway Company; The Texas & Pacific Railway Company; Marshall & East Texas Railway Company; James A. Baker, Receiver International & Great Northern Railway Company; Cecil A. Lyons, Receiver International & Great Northern Railway Company; Texas Southeastern Railroad Company; Houston & Texas Central Railroad Company; Texas Midland Railroad, and San Antonio & Aransas Pass Railway Company.

This case being before us upon petition for supplemental order, and order to show cause why the same should not issue, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

429 It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby notifi- and required to cease and desist, on or before September 15th, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving their present class rates for the transportation

of traffic from Shreveport, La., to points in eastern Texas, as defined in said report, or from points in eastern Texas as there defined toward said Shreveport, which rates are found in said report to be unjust and unreasonable to the extent that they exceed those hereinafter prescribed as maxima.

It is further ordered, That said defendants, according as they participate in the transportation, be and they are hereby, notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of traffic from Shreveport, La., to points in said eastern Texas, and from points in said eastern Texas toward said Shreveport, class rates which shall not exceed the following in cents per 100 pounds, found in said report to be reasonable, to wit:

Rates in Cents per 100 *Pounds for Single Line Application.*

By "single line" is meant one line of railroad or two or more lines of railroad under the same management and control.

Distance (in miles).	1	2	3	4	5	A	B	C	D	E
10 and less.....	13	12	10	8	6	7	6	5	5	4
12 and over 10...	14	12	11	9	6	7	6	5	5	4
15 and over 12...	15	13	12	10	7	8	6	5	5	4
18 and over 15...	16	14	12	10	8	9	7	6	5	5
21 and over 18...	17	15	13	11	9	10	8	6	6	5
24 and over 21...	18	16	14	12	10	11	9	7	6	5
27 and over 24...	19	17	15	13	11	12	10	8	7	6
30 and over 27...	20	18	16	14	12	13	11	9	7	6
33 and over 30...	21	19	17	15	13	14	12	10	8	6
36 and over 33...	22	20	18	16	14	15	13	10	8	7
39 and over 36...	23	21	19	17	15	16	14	11	9	7
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42 and over 39...	24	22	20	18	16	17	14	11	9	7
45 and over 42...	25	23	21	19	17	18	15	12	10	8
48 and over 45...	26	24	22	20	17	18	15	12	10	8
51 and over 48...	27	25	23	21	18	19	16	13	11	8
54 and over 51...	28	26	24	22	18	19	16	13	11	9
57 and over 54...	29	27	25	23	19	20	17	14	12	9
60 and over 57...	30	28	26	24	19	20	17	14	12	9
63 and over 60...	31	28	26	24	20	21	18	15	13	10
66 and over 63...	32	29	27	25	20	21	18	15	13	10
69 and over 66...	33	30	28	26	21	22	19	16	13	10
72 and over 69...	34	31	29	27	21	22	19	16	13	10
75 and over 72...	35	32	30	28	22	23	20	17	14	11
78 and over 75...	36	33	31	29	22	23	20	17	14	11
81 and over 78...	37	34	32	30	23	24	21	18	14	11

Distance (in miles).	1	2	3	4	5	A	B	C	D	E
84 and over 81...	38	35	33	30	23	24	21	18	14	11
87 and over 84...	39	36	34	31	24	25	22	19	15	12
90 and over 87...	40	37	35	32	24	25	22	19	15	12
93 and over 90...	41	38	35	32	25	26	23	20	16	13
96 and over 93...	42	39	36	33	25	26	23	20	16	13
99 and over 96...	43	40	37	34	26	27	24	21	16	13
102 and over 99...	44	41	38	35	26	27	24	21	16	13
105 and over 102..	45	42	39	36	27	28	25	22	17	14
108 and over 105..	46	43	40	37	27	28	25	22	17	14
111 and over 108..	47	44	40	38	28	29	26	23	17	14
114 and over 111..	48	45	41	39	28	29	26	23	17	14
117 and over 114..	49	46	42	40	29	30	27	24	18	15
120 and over 117..	50	47	43	41	29	30	27	24	18	15
124 and over 120..	51	47	43	41	30	31	28	25	18	15
128 and over 124..	52	48	44	42	30	31	28	25	18	15
132 and over 128..	53	49	45	43	31	32	29	25	18	15
136 and over 132..	54	50	45	43	31	32	29	26	19	16
140 and over 136..	55	51	46	44	32	33	30	26	19	16
144 and over 140..	56	52	47	45	32	33	30	26	19	16
148 and over 144..	57	53	48	46	33	34	31	27	19	16
152 and over 148..	58	54	49	47	33	34	31	27	19	16
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156 and over 152..	59	55	50	48	34	35	32	27	20	16
160 and over 156..	60	56	51	49	34	35	32	28	20	16
164 and over 160..	61	56	51	49	35	36	33	28	20	16
168 and over 164..	62	57	51	49	35	36	33	28	20	16
172 and over 168..	63	58	52	50	36	37	34	29	20	16
176 and over 172..	64	59	53	51	36	37	34	29	21	16
180 and over 176..	65	60	54	52	37	38	35	29	21	16
184 and over 180..	66	61	55	53	37	38	35	30	21	16
188 and over 184..	67	62	56	54	38	39	36	30	21	16
192 and over 188..	68	63	57	55	38	39	36	30	21	16
196 and over 192..	69	64	58	56	39	40	37	31	22	17
200 and over 196..	70	65	58	56	39	40	37	31	22	17
205 and over 200..	71	65	58	56	40	41	37	31	22	17
210 and over 205..	72	66	59	57	40	41	38	32	22	17
215 and over 210..	73	67	59	57	41	42	38	32	22	17
220 and over 215..	74	68	59	57	41	42	38	32	22	17
225 and over 220..	75	69	59	57	42	43	39	33	23	17
230 and over 225..	76	70	60	58	42	43	39	33	23	17
235 and over 230..	77	70	60	58	43	44	39	33	23	17
240 and over 235..	78	71	60	58	43	45	40	34	23	18
245 and over 240..	79	71	61	58	43	45	40	34	23	19
250 and over 245..	80	72	62	58	43	45	40	34	24	19
260 and over 250..	82	73	63	59	44	45	40	34	24	19
270 and over 260..	85	74	64	60	44	46	41	35	25	20
280 and over 270..	87	75	65	60	44	46	41	35	25	20
290 and over 280..	88	77	66	61	45	47	42	36	25	20

Distance (in miles).	1	2	3	4	5	A	B	C	D	E
300 and over 290..	89	78	67	61	45	47	42	36	26	20
320 and over 300..	94	82	70	62	47	48	44	37	27	21
340 and over 320..	98	85	72	63	49	50	46	38	29	23
360 and over 340..	98	85	72	64	49	50	46	38	30	25
380 and over 360..	102	88	74	65	50	51	47	39	31	26
400 and over 380..	102	88	74	66	50	51	47	39	31	26
450 and over 400..	106	91	76	66	52	53	49	40	32	28

432. For joint line application the rates shall be made by adding to the rates prescribed in the above table the following amounts, in cents 100 pounds:

Class:	1	2	3	4	5	A	B	C	D	E
Rates	8	7	6	5	4	4	4	3	2	2

By "joint line" is meant two or more lines of railroad not under the same management and control.

When the sum of the rates prescribed for single line application is less than a joint rate made in accordance with the above instructions, the joint rate shall not exceed such sum of rates.

Rates so made not to exceed the following for distances not exceeding 450 miles:

Class:	1	2	3	4	5	A	B	C	D	E
Rates	106	91	76	66	52	53	49	40	32	28

It is further ordered, That said defendants be, and they are hereby, notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of traffic from points in said eastern Texas toward said Shreveport the provisions of the current western classification in effect at the time such traffic mover.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 15, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving rates for the transportation of any commodity from Shreveport, La., to points in said eastern Texas, higher than are contemporaneously applied by them to the transportation of such commodity for an equal distance from points in said eastern Texas toward said Shreveport, or higher, distance considered, than the corresponding class rates already named herein, as the present relation of commodity rates is found in said report to be unjustly discriminatory.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and

required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general
433 public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of any commodity from Shreveport, La., to points in said eastern Texas, rates not in excess of those contemporaneously applied by them to the transportation of such commodity for an equal distance from points in said eastern Texas toward said Shreveport, and not in excess, distance considered, of the corresponding class rates already named herein, which relation of rates is found in said report to be nondiscriminatory.

It is further ordered, "That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to cease and desist, on or before September 15, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving higher inbound rates for the transportation of uncompressed cotton from said eastern Texas to Shreveport, La., for concentration there, than they contemporaneously apply, distance considered, to the transportation of uncompressed cotton to concentration points in said eastern Texas, as the present relation of rates is found in said report to be unjustly discriminatory.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of uncompressed cotton from said eastern Texas to Shreveport, La., for concentration there, inbound rates not in excess, distance considered of the rates contemporaneously applied by them to the transportation of uncompressed cotton to concentration points in said eastern Texas, which relation of rates is found in said report to be nondiscriminatory.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect.

434 *Petition Filed with Interstate Commerce Commission by the Railroad Commissioners of Louisiana Sept. 9th, 1915, as Cause No. 8290.*

The Plaintiffs introduced and read in evidence the Petition filed with the Interstate Commerce Commission, Sept. 9th, 1915, in Cause No. 8290, which Petition reads as follows:

"Before the Interstate Commerce Commission.

SHELBY TAYLOR, Chairman; B. A. BRIDGES and JOHN T. MICHEL, Members of and Constituting the Railroad Commission of Louisiana, Complainants,

against

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY and AVERY TURNER and G. H. Schleyer, Its Receivers; The St. Louis, Brownsville & Mexico Railway Company, and Frank Andrews, Its Receiver; The Beaumont, Sour Lake & Western Railway Company, and Frank Andrews, Its Receiver; The Orange & Northwestern Railroad Company, and Frank Andrews, Its Receiver; Paris & Great Northern Railroad Company, Houston & Brazos Valley Railway Company, Missouri, Oklahoma & Gulf Railway Company, of Texas, Angelina & Neches River Railroad Company, The Chicago, Rock Island & Gulf Railway Company, The Denison & Pacific Suburban Railway Company, Fort Worth & Denver City Railway Company, Paris & Mt. Pleasant Railroad Company, Sugarland Railway Company, Texas City Terminal Company, Trinity Valley & Northern Railway Company, Trinity Valley Southern Railroad Company, The Lufkin, Hemphill & Gulf Railroad Company, Shreveport, Houston & Gulf Railroad Company, Port Bolivar Iron Ore Railway Company, Texas, Arkansas & Louisiana Railway Company, Texas Short Line Railway Company, Defendants.

Petition.

"The petition of the above-named complainants respectfully shows:

I.

"That complainants are members of and constitute the Railroad Commission of Louisiana, duly created, organized and now existing under the constitution and laws of the State of Louisiana; that by the statute of said State (act No. 195, of the Acts of General Assembly of 1906) and by the Act of Congress entitled "An Act to Regulate Commerce" as amended, complainants are authorized to bring this petition before the Interstate Commerce Commission, and being so authorized, bring this their complaint on behalf of the State of Louisiana and various citizens thereof, as herein set forth.

435

II.

"That the defendants above-named are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad, between points in the States of Texas and Louisiana, and points in other states of the United States, and particularly between Shreveport, in the State of Louisiana, and various points in the State of Texas, as their respective lines may run, and that, as such common carriers, said defendants are subject to the provisions of the "Act to Regulate Commerce" approved February 4, 1887, and all acts amendatory thereof or supplementary thereto.

III.

"That various merchants, manufacturers, jobbers and others residing at said city of Shreveport are shippers of various classes and commodities from said city of Shreveport into the said State of Texas for delivery by defendants to various consignees in said State, and are also consignees of various articles of freight shipped from various points in the State of Texas over the lines of the defendants for delivery at said Shreveport. The various articles so transported in interstate commerce are embraced in various classes of freight as described in Western Classification No. 53, Fyfe's I. C. C. No. 11 and the supplements thereto and re-issues thereof, and exceptions to said classification, as contained in S. W. L. Classification, Exceptions and Rules, Circular No. 1-F, Leland's I. C. C. No. 1026, Supplements thereto or re-issues thereof, and the following list of commodities:

"Agricultural implements (Item 1); hand implements; bagging and ties (straight or mixed); beer; brick, common; candy, l. c. l.; canned fruit and vegetables; canned goods (Item 2); cotton gins and compresses (Item 3); cottonseed, caked and meal (straight or mixed); cottonseed hulls; cottonseed; apples; apples in boxes or barrels, l. c. l.; peaches; peaches in boxes or crates; l. c. l.; cabbage; potatoes; vegetables taking 'Class C' in carloads; fruit and vegetables taking fourth-class l. c. l.; fruit, tropical; corn; corn, l. c. l.; hay; hay, l. c. l.; handles, wooden, l. c l. (Item 4); hides, dry; hides, green; hides, dry in bales or bundles, l. c. l., hides, green, in bundles, l. c. l.; iron and steel articles (Item 5); iron beams, columns and girders; pig-iron; pipe, cast, couplings and connections; roofing and sheet iron (Item 6); wire and nails (Item 7); junk (scrap iron) — c. l.; junk (scrap iron) l. c. l.; leather (Item 8); liquors (Item 9); paper (Item 10); peanuts; peanuts (in sacks) l. c. l.; salts, bleaching soda,
436 lye and potash; sand and gravel; sugar and molasses; sugar and molasses, l. c. l.; tinned articles (Item 11); vehicles, passenger, boxed or crated; wool, in grease, in bales.

(For description of Items see Exhibit A.)

"All persons shipping between said points in Texas and said Shreveport are compelled to use the lines of the defendants in order to obtain transportation between said points. For many years the de-

fendants have maintained over their individual lines and in connection with each other and their connection lines, through routes of transportation between said Shreveport and said Texas points, and through rates applicable thereon; said rates now in effect are greatly in excess of former rates. The various merchants, manufacturers, jobbers and shippers doing business at Shreveport are largely dependent for market upon the territory lying within 'Eastern Texas,' and there meet in competition articles manufactured within and outside of, the State of Texas, and shipped or re-shipped from various points in the State of Texas to such competitive points.

"The defendants now charge, collect and receive for transportation from said distributing points in Texas to said competitive points rates which are much less by any method of comparison than rates now exacted by defendants for transportation of similar articles involving a less service between Shreveport and same destinations.

IV.

"That the defendants now exact and for some time past have exacted for the transportation of the various classes and commodities between Shreveport and various destinations on their lines in the State of Texas, rates that are unjust and unreasonable, that are unduly prejudicial and discriminatory, and that are higher for the shorter than the longer distance, thereby violating Sections 1, 2, 3 and 4 of the Act to Regulate Commerce.

"The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefit which, under just, reasonable and non-discriminatory rates would be afforded to such shippers and consignees at Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in 'Eastern Texas.' As a result of said unlawful rate, Texas competitors of said Shreveport shippers and consignees are given an undue advantage in said competitive territory in said 'Eastern Texas.'

437

V.

"That heretofore, namely, on June 17, 1915, in a case entitled J. J. Meredith, et al. vs. St. Louis Southwestern Railway Company, et al., No. 3918, this Commission made its report upon supplemental hearing in said case and entered its supplementary order therein, notifying and requiring the defendants in the said proceeding, No. 3918, to cease and desist, on or before September 15, 1915, and thereafter to abstain from charging, demanding, collecting or receiving their present class rates for the transportation of traffic from Shreveport, La. to points in 'Eastern Texas,' as defined in said report and order, or from points in 'Eastern Texas,' as they are defined, toward said Shreveport, which rates are found in said report to be unjust and unreasonable, to the extent that they exceed those thereinafter prescribed as maxima.

"It was further ordered that the said defendants in the proceeding No. 3918, according as they participate in the transportation, be and they were notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than thirty days' filing and posting in the manner prescribed by Section 6 of the Act to Regulate Commerce, and thereafter to maintain and apply to the transportation of traffic from Shreveport, La. to points in said 'Eastern Texas,' and from points in said 'Eastern Texas' toward said Shreveport, class rates which shall not exceed those prescribed in the said order and found in the said report to be reasonable.

"It was further ordered that the defendants in the said case No. 3918, be and they were notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than thirty days' filing and posting in the manner prescribed by Section 6 of the Act to Regulate Commerce, and thereafter to maintain and apply to the transportation of traffic from points in said 'Eastern Texas' towards said Shreveport the provisions of the current Western Classification in effect at the time such traffic moves.

"It was further ordered that the said defendants in case No. 3918, according as they participate in the transportation, be and they were notified and required to cease and desist, on or before September 15, 1915, and thereafter to abstain from charging, demanding, collecting or receiving rates for the transportation of any commodity from Shreveport, La. to points in said 'Eastern Texas' higher than
438 are contemporaneously applied by them to the transportation of said commodity for an equal distance from points in said 'Eastern Texas' towards said Shreveport, or higher, distance considered, than the corresponding class rates named in said order, as the present relation of commodity rates is found in said report to be unjustly discriminatory.

"It was further ordered that said defendants named in case No. 3918, according as they participate in the transportation, be and they were notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Act to Regulate Commerce, and thereafter to maintain and apply to the transportation of any commodity from Shreveport, La. to points in said 'Eastern Texas' rates not in excess of those contemporaneously applied by them to the transportation of said commodities for an equal distance from points in said 'Eastern Texas' towards said Shreveport, and not in excess, distance considered, of the corresponding class rates already named therein, which relation of rates is found in said report to be non-discriminatory.

"It was further ordered in said Supplemental Order No. 3918 that the defendants named there be and they were required to establish, on or before September 15, 1915, and thereafter to abstain from charging, demanding, collecting or receiving higher inbound rates for the transportation of uncompressed cotton from said 'Eastern

Texas' to said Shreveport, La. for concentration there, etc., etc., and that the defendants named in the said Supplemental Order No. 3918 on or before September 15, 1915, be and they were required to maintain and apply to the transportation of uncompressed cotton from said 'Eastern Texas' to Shreveport, La. for concentration, these inbound rates now applies by them to the transportation of uncompressed cotton to concentration points in said 'Eastern Texas,' which relation in rates is found in said report to be non-discriminatory, and that the said order in all respects shall continue in force for a period of not less than two years from the date at which it shall take effect.

VI.

"That each and all of the defendant companies herein operate either their entire line or a portion thereof within the territory defined in the Supplemental Order in Case No. 3918; that all of said companies operate their entire line therein with the exception of The Chicago, Rock Island & Gulf Railway, which operates therein
439 from Dallas to Saginaw, Texas, the St. Louis, Brownsville & Mexico Railway, which operates from Houston to the Brazos River, the Ft. Worth & Denver City Railway, which operates from Ft. Worth to Saginaw, Texas, and the St. Louis, San Fransisco & Texas Railway, which operates from Adams to Ft. Worth, Texas.

VII.

"Complainants say that, unless an order similar to the Supplemental Order in case No. 3918, J. J. Meredith, et al. vs. St. Louis Southwestern Railway Company, et al., is made applicable to the said lines and portions of lines of defendants herein before mentioned in this case, they cannot obtain the full relief which they sought on behalf of the shippers of the State of Louisiana, and particularly the City of Shreveport, in said case No. 3918.

VIII.

"That the said lines, defendants herein, are so situated with reference to the other lines named as defendants in case No. 3918, J. J. Meredith, et al. vs. St. Louis Southwestern Railway Company et al., on the docket of the Commission, that unless similar order or orders are made applicable to the defendants in this case, the said original and supplemental order issued in case No. 3918, before referred to, will operate as an unjust discrimination against shippers who desire to use the lines of the above-named defendants.

IX.

"By way of illustration, complainants show that the Orange & Northwestern Railroad and the Beaumont, Sour Lake & Western Railway parallel the line of the Texas & New Orleans Railroad from the eastern boundary of Texas to Houston and at but very short

distance therefrom, and the defendants herein, St. Louis, San Francisco & Texas Railway, practically parallel the line of the Missouri, Kansas & Texas Railway Company of Texas, and the Houston & Texas Central *Central* Railroad between Denison, Sherman, Dallas and Fort Worth, Texas, all of which cities last named are within the territory heretofore defined by the Commission as 'Eastern Texas,' and that the defendant, Missouri, Oklahoma & Gulf Railway Company of Texas is now operated between Denison, Fort Worth and Dallas, Texas, over the tracks of the Houston & Texas Central Railroad and the St. Louis Southwestern Railway Company of Texas by virtue of trackage contracts between said three carriers.

"Complainants say that the conditions applicable to each
440 and all of the lines made defendants in this petition are substantially the same as those applicable to each and all of the defendants parties to the proceeding entitled J. J. Meredith, et al., vs. St. Louis, Southwestern Railway Company, et al. ,No. 3918 on the docket of the Commission.

X.

"Complainants further say that the defendants in case No. 3918, herein above referred to, have all published the class rates provided for in said order of the Commission, effective September 15, 1915, and complainants are advised and believe that the commodity tariff provided for therein will be published and made effective on or before November 1, 1915, and that unless a similar order is entered and made applicable to each and all of the defendants in this case, the rate conditions in 'Eastern Texas' will become extremely involved, and the construction and application of proper tariffs between roads not parties to the original and supplemental orders in case No. 3918 and roads which are parties thereto, and the collection of proper charges for the transportation of freight between points in this territory will be a matter of extreme difficulty, if not wholly impossible.

XI.

"Complainants further show that the conditions existing in the territory traversed by the lines made defendants in this proceeding are in no wise different nor changed from those applicable at the time of the original and supplemental hearings held by the Commission in case No. 3918, herein above referred to.

XII.

"Therefore, complainants bring this complaint before the Interstate Commerce Commission, and pray that an answer be required from each of the defendants, and that, after a full hearing and due investigation, said Interstate Commerce Commission will, by proper order, require the defendants to cease and desist from the aforesaid violations of the Act to Regulate Commerce; and will, by further order, prescribe on all the various classes and commodities moving

between Shreveport and points on the defendant lines, just and reasonable rates between said Shreveport and stations on the said defendants' lines in said 'Eastern Texas.'

"Complainants further pray for such other and further relief as to the Interstate Commerce Commission may seem meet and proper in the premises, and for the reasons hereinbefore set forth and the emergencies created by the orders heretofore entered by the Commission in case No. 3918, that this case be expedited as much
441 as possible, and that, if consistant, *that* such orders as may be entered herein be made effective simultaneously with the supplemental order entered by the Commission in case No. 3918, entitled 'J. J. Meredith, et al., vs. St. Louis, Southwestern Railway Company, et al.'

"And for general relief.

"RAILROAD COMMISSION OF LOUISIANA,

"Per W. M. BOWON, *Attorney.*"

EXHIBIT "A."

Description of Commodities where Reference is Made to Items.

Item 1. Agricultural implements (excepting hand implements), plow points and other parts of cold agricultural implements, rough or finished, and farm wagons or parts of same rough or finished, straight or mixed, carloads.

Item 2. Canned goods, viz: Canned fish, oysters (pickled or cove), clam broth and juice in tin cans, boxed, straight or mixed, carloads or in carloads mixed with canned fruit and vegetables.

Item 3. Cotton ginning machinery, consisting of compresses, condensers, elevators, presses, combined gins and presses, shafting feeders, gins, pulleys, hand presses and parts. Also engines and boilers, except engines and boilers cannot be shipped with above articles between Shreveport, La., and Texas points at the carload rate.

Item 4. Wooden handles of all kinds and wooden spokes and felloes, in boxes or crates, taking 4th class rating.

Item 5. (*a*) Iron and steel articles; angle, bar, hook, rod, band, boiler, skelp and tank iron, and boiler plates (straight or bent), hand iron prepared for water tanks, cisterns and conduits, and nail plate in straight or mixed carloads.

(*b*) Rivets, nuts, bolts, washers, channel iron and tees, iron angle turned buckles (casting weighing less than 100 pounds) and braces, straight or mixed, carloads. All articles enumerated in this item can be shipped between points in Texas in straight or mixed carloads; from Shreveport, La. to Texas points, articles named in paragraph (*a*) cannot be mixed with articles named in paragraph (*b*) at the carload rates.

Item 6. Roofing and sheet iron (exclusive of Russia and planished), plain and corrugated, black, painted or galvanized.

442 Item 7. Wire (iron or steel), barbed, coppered, galvanized (painted or plain), woven wire, field fencing, poultry netting, wire hoops, hay bale ties, nails, spikes, and staples, straight or mixed, carloads.

Rates shown on poultry netting and woven wire field fencing from Shreveport, La. to Texas points do not apply on the straight or mixed carloads of these articles.

Item 8. Finished veal, kid or calf skins, sole, harness, skirting, and crops, walrus in the flat, leather, rough, buff, colored, side, and seal skins, hides and billets, hide splits and pieces from boot, shoe and harness factories.

Item 9. Liquors; whisky, alcohol, cologne, and other alcoholic liquors in wood or glass.

Item 10. Paper; bags, wrapping, rag, straw or manilla.

Item 11. Tinned articles, as described in Items 33 to 40 inclusive, page 173, and Item 18, page 314, to Item 16, page 315, of Western Classification 53, R. C. Fife's I. C. C. 11.

List of Tariffs in Which Rates on the Above Classes and Commodities are Carried.

Interstate.

Classes (between) Southwestern Lines' Tariff 24 W. F. A. Leland's I. C. C. 1005.

Commodities (from, to and between) Southwestern Lines' Tariff 24 W. F. A. Leland's I. C. C. 1005, except as follows:

Cotton Seed, cotton seed caked, meal and hulls C. L. (from) Southwestern Lines' Tariff 40-C, F. A. Leland's I. C. C. 864.

Cotton seed, C. L. (to) Southwestern Lines' Tariff 12-Q, A. Leland's I. C. C. 930.

Peaches, cabbage, potatoes, C. L. (to) Southwestern Lines' Tariff 13-S, F. A. Leland's I. C. C. 1046.

Corn and hay C. L. (from) Southwestern Lines' Tariff 25, F. A. Leland's I. C. C. 1011.

Corn and hay, C. L. (to) Southwestern Lines' Tariff 23-P, F. A. Leland's I. C. C. 1010.

Exceptions to Western Classification, Southwestern Lines' Exception and Rule, Circular 1-F, F. A. Leland's I. C. C. 1026.

Classification. Western Classification 53, R. C. Fife's I. C. C. 11.

443 *Petition Filed with Interstate Commerce Commission, October 30, 1915, by Railroad Commissioners of Louisiana.*

Plaintiffs introduced and read in evidence the Petition filed with the Interstate Commerce Commission by the Railroad Commissioners of Louisiana, October 30, 1915, in Cause No. 8418, and against each and all of Plaintiffs, which Petition reads as follows:

"The petition of the above named complainants respectfully shows:

I.

"That complainants are members of and constitute the Railroad Commission of Louisiana, duly created, organized and now existing under the constitution and laws of the State of Louisiana; that by the statute of said state (Act No. 195, of the Acts of General Assembly of 1906) and by the Act to Regulate Commerce, as amended, complainants are authorized to bring this petition before the Interstate Commerce Commission, and being so authorized, bring this their complaint on behalf of the State of Louisiana and various citizens thereof, as herein set forth.

II.

"That the defendants above-named are common carriers engaged in the transportation of passengers and property by continuous carriage of shipment, wholly by railroad, between points in the States of Texas and Louisiana, and points in other states of the United States, and particularly between Shreveport, in the State of Louisiana, and various points in the State of Texas, as their respective lines may run, and that, as such common carriers, said defendants are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and all acts amendatory thereof or supplementary thereto.

III.

"That heretofore, namely, on June 17, 1915, in a case entitled J. J. Meredith, et al. v. St. Louis Southwestern Railway
444 Company, et al., No. 3918, this Commission made its report upon supplemental hearing in said case and entered its supplementary order therein, notifying and requiring the defendants in the said proceeding, No. 3918, to cease and desist, on or before September 15, 1915, and thereafter to abstain from charging, demanding, collecting or receiving their present class rates for the transportation of traffic from Shreveport, La., to points in "Eastern Texas," as defined in said report and order, or from points in "Eastern Texas," as they are defined, toward said Shreveport, which rates are found in said report to be unjust and unreasonable, to the extent that they exceed those thereinafter prescribed as maxima.

"It was further ordered that the said defendants in the proceeding No. 3918, according as they participate in the transportation, be and they were notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed by Section 6 of the Act to Regulate Commerce, and thereafter to maintain and apply to the transportation of traffic from Shreveport, La., to points in said "Eastern Texas" and from points in said "Eastern Texas" toward said Shreveport, class rates which shall not exceed those prescribed

in the said order and found in the said report to be reasonable.

"It was further ordered that the defendants in the said case No. 3918, be and they were notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed by Section 6 of the Act to Regulate Commerce, and thereafter to maintain and apply to the transportation of traffic from points in said "Eastern Texas" towards said Shreveport the provisions of the current
445 Western Classification in effect at the time such traffic moves.

"It was further ordered that the said defendants in case No. 3918, according as they participate in the transportation, be and they were notified and required to cease and desist, on or before September 15, 1915, and thereafter to abstain from charging, demanding, collecting or receiving rates for the transportation of any commodity from Shreveport, La., to points in said "Eastern Texas" higher than are contemporaneously applied by them to the transportation of said commodity for an equal distance from points in said "Eastern Texas" towards said Shreveport, or higher, distance considered, than the corresponding class rates named in said order, as the present relation of commodity rates is found in said report to be unjustly discriminatory.

"It was further ordered that said defendants named in case No. 3918, according as they participate in the transportation, be and they were notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Act to Regulate Commerce, and thereafter to maintain and apply to the transportation of any commodity from Shreveport, La., to points in said "Eastern Texas" rates not in excess of those contemporaneously applied by them to the transportation of said commodities for an equal distance from points in said "Eastern Texas" towards said Shreveport, and not in excess, distance considered, of the corresponding class rates already named therein, which relation of rates is found in said report to be non-discriminatory.

"It was further ordered in said Supplemental Order No. 3918 that the defendants named there be and they were required to establish, on or before September 15, 1915, and thereafter to abstain from charging, demanding, collecting or receiving higher
446 inbound rates for the transportation of uncompressed cotton from said "Eastern Texas" to said Shreveport, La., for concentration there, etc., etc., and that the defendants named in the said Supplemental Order No. 3918 on or before September 15, 1915, be and they were required to maintain and apply to the transportation of uncompressed cotton *for* said "Eastern Texas" to Shreveport, La., for concentration, their inbound rates now applied by them to the transportation of uncompressed cotton to concentration points in said "Eastern Texas," which relation in rates is found in said report to be non-discriminatory, and that the said

order in all respects shall continue in force for a period of not less than two years from the date at which it shall take effect.

"Thereafter upon protest this Commission suspended the tariffs which were filed by certain respondents, as they asserted, in compliance with the Commission's order, and further, certain of the respondents were permitted, on short notice, to withdraw certain rates established, as they asserted, in compliance with said supplemental order; said suspension above referred to being the subject of investigation in I. & S. Docket No. 710.

IV.

"Petitioners allege that by reason of the present complicated situation, and the competitive conditions now surrounding trade and commerce between Shreveport and Texas points, the relief which was sought in the original petition in I. C. C. Docket No. 3918 and the supplemental petitions therein filed, will not be obtained unless and until an investigation is made by this Commission of interstate rates from and to Shreveport, Louisiana, to and from all points on the lines of the respondents in the State of Texas.

"Petitioners allege that merchants, manufacturers, jobbers, dealers and shippers at Shreveport, Louisiana, are in competition with all merchants, manufacturers, jobbers, dealers and shippers
447 in the State of Texas in the purchase and sale of commodities produced or sold in the State of Texas at all points on the lines of the respondents; that the rates now charged and collected for the transportation of all classes and commodities from and to Shreveport, to or from all points on the lines of the respondents in the State of Texas, are unjust and unreasonable — in violation of Section 1 of the Act to Regulate Commerce; that just and reasonable rates for application between Shreveport, Louisiana and points on lines of defendants in Texas "Common Point Territory" as hereinafter described would not exceed the scale of class rates prescribed by this Commission in its supplemental order, 34 I. C. C., 472, and that said rates should be governed in their application by Western Classification No. 53, supplements thereto or reissues thereof.

"Petitioners further allege that just and reasonable rates for application between Shreveport, Louisiana and points on lines of defendants in Texas "Differential Territory" as hereinafter described, would not exceed the scale prescribed by this Commission in its supplemental order, 34 I. C. C., 472, with the following differentials, which shall not be available when the entire distance traversed is 400 miles or less. The rates for shipments transported distances exceeding 400 miles, of which 400 miles or more consists of mileage in territory not subject to differential rates, to be made by employing the following differentials for the distance in differential territory actually traversed by the shipments.

448 *Differential Rates in Cents per 100 Pounds.*

Distance, miles.	Less than carloads. 1	2	3	4	5	Carloads. A	B	C	D	E
20 and less.....	2	2	1	1	1	1	1	1	1	1
30 and over 20...	3	2	1	1	1	1	1	1	1	1
40 and over 30...	4	3	2	1	1	1	1	1	1	1
50 and over 40...	5	4	3	2	1	2	1	1	1	1
60 and over 50...	6	5	4	3	2	3	2	2	2	2
70 and over 60...	7	6	5	4	3	4	2	2	2	2
80 and over 70...	8	7	6	5	4	5	3	2	2	2
90 and over 80...	9	8	7	6	5	6	4	3	3	2
100 and over 90...	10	9	8	7	6	7	5	4	3	3
110 and over 100..	11	10	9	8	7	8	6	5	4	3
120 and over 110..	12	11	10	9	7	8	6	5	4	3
130 and over 120..	13	12	11	10	8	9	7	6	5	4
140 and over 130..	14	13	12	11	8	9	7	6	5	4
150 and over 140..	15	14	13	12	9	10	8	7	6	5
160 and over 150..	16	15	14	13	9	10	8	7	6	5
170 and over 160..	17	16	15	14	10	11	9	8	7	6
180 and over 170..	18	17	16	15	10	11	9	8	7	6
190 and over 180..	19	18	17	16	11	12	10	9	8	7
200 and over 190..	20	19	18	17	11	12	10	9	8	7
215 and over 200..	21	20	19	18	12	13	11	10	9	8
230 and over 215..	22	21	20	19	12	13	11	10	9	8
245 and over 230..	23	22	20	19	13	14	12	11	10	9
260 and over 245..	24	23	21	20	13	14	12	11	10	9
Over 260	25	23	21	20	14	15	13	12	11	10

"Texas Common Point Territory will be understood as that part of the State of Texas on and east of a line drawn as follows:

"From the point where the St. Louis, San Francisco and Texas crosses the Red River, just north of Hazel, to Acme, on the Fort Worth and Denver City Railway; thence east and south of
449 the Quanah, Acme and Pacific Railway via an air line to Sagerton, on the Stamford and Northwestern Railway; thence via an air line to Justiceburg, on the Panhandle and Santa Fe Railway; thence via an air line to Big Springs; on the Texas and Pacific; thence east of the Concho, San Saba and Llano Valley Railway, to San Angelo, on the Gulf, Colorado & Santa Fe Railway; thence via an air line, to Menardville on the Fort Worth and Rio Grande Railway; thence, via an air line to Llano on the Houston & Texas Central Railway; thence, east of the San Antonio and Aransas Pass Railway and the San Antonio, Fredericksburg and Northern Railway, to San Antonio; (including stations on the International and Great Northern Railway, to and including Devine); thence just west of the San Antonio, and Aransas Pass Railway, via Skidmore and Sinton, to Corpus Christi, on the Gulf of Mexico.

"Texas Differential Territory is all of that part of the State of Texas west of Texas Common Point Territory.

"Petitioners further allege that respondents, in establishing rates on the various classes and commodities for intrastate movement within the State of Texas, lower than are contemporaneously maintained for like distances to and from Shreveport from and to Texas destinations, subject manufacturers, merchants, jobbers, dealers and shippers at Shreveport, Louisiana, to unjust discrimination, and give to Texas competitors an undue preference in violation of Section 3 of the Act to Regulate Commerce. In order to remove such unjust discrimination this Commission should require the respondents to establish, for all transportation between points on the lines of respondents in the State of Texas, rates which are not in excess of those contemporaneously maintained to and from Shreveport, from or to points on the lines of the respondents governed by Western Classification.

V.

Petitioners allege that the circumstances and conditions existing in the State of Texas on the lines of the respondents are in
450 no wise different than those applicable at the time of the original and supplemental hearings by this Commission, herein referred to, and are no different from those contemporaneously existing for equal distances from or to Shreveport, to or from points on the lines of the respondents.

"Therefore, petitioners bring this petition before the Interstate Commerce Commission and pray that an answer be required from each of the defendants, and that after a full hearing and due investigation said Interstate Commerce Commission will, by proper order, require the defendants to cease and desist from the aforesaid violations of the Act to Regulate Commerce, and will, by further order, prescribe on all the various classes and commodities (a more particular description of which commodities is contained in "Appendix A" attached hereto) moving between Shreveport and points on the defendant lines, just and reasonable rates for the transportation thereof between said Shreveport and all stations on said respondents' lines in said Eastern Texas, and require the establishment of non-discriminatory rates, rules and regulations for such transportation from or to Shreveport, to or from all Texas points, and also for the establishment of the same classification upon movements from or to Shreveport, to or from all points on the lines of the respondents in the State of Texas.

"Petitioners pray for such other and further orders as may be meet and proper in the premises and petitioners' cause may require."

451 On October 11, 1916, the defendant B. F. Looney, Attorney General of Texas forwarded the following telegram to the Interstate Commerce Commission at Washington:

"October 11th, 1916.

"The Honorable Interstate Commerce Commission, Washington, D. C.:

"Representing the State of Texas, in her capacity as a large shipper of intrastate traffic, and also as the Attorney General for the people of the State, I respectfully protest against what is known as 'Texas Lines' Tariff No. 2-B' recently filed by the railway companies of Texas to become effective on November First, nineteen hundred and sixteen, and on behalf of the interests I represent, I earnestly request a suspension of these proposed rates, and pray for a hearing before the full Commission as early as is practicable before these rates are to become effective, date to be named by Commission.

"We will file before the date of hearing, in addition to this, a formal application in extenso, and I understand various shippers, representatives of various localities, industries and commercial organizations of the State, will also protest against these rates, and will ask a suspension thereof, and for a hearing, and that on the date named by the Commission representatives of varied interests of Texas will appear before you and show cause why these rates should be suspended and a full hearing accorded.

"The rates proposed in this tariff are by their terms made applicable on all the railways throughout the State of Texas on all traffic, both intrastate as well as interstate, in absolute disregard of rates prescribed by our Railroad Commission under authority of Texas laws.

"The grounds for our application are in substance—

"First, that in the order of your Honorable body, the Commission did not attempt to deal with traffic wholly within the State of Texas, and entirely unrelated to interstate commerce, and your or-
452 der furnished no justification or warrant for the proposed action of the railway companies in disregarding State rates made by virtue of State laws applicable alone to intrastate traffic, hence the proposed action of the railways while claiming authority under your order, is really in excess of your order and a usurpation of authority.

"Second, if your order is susceptible to the construction given it by the railway companies of Texas, then we respectfully insist that the same is void for the reason that Congress has not authorized you, but has specifically prohibited your Honorable Body from regulating commerce wholly within a state. It certainly will not be insisted that all the intrastate traffic of Texas is so related to interstate commerce as to justify your Honorable Body in taking over the entire rate making functions of the Government, and in this way working an overthrow of the State authority in regulating her internal traffic.

"Third, in the hearing of the Shreveport matter from which your order issued, under which the railways have builded their Tariff No. 2-B, the State of Texas was not represented, the Attorney General of the State was not a party, the Railroad Commission of the State was not a party, and no one was a party or appeared at this hearing who was authorized to represent or to speak for the State in either her

separate or corporate capacity, nor were the veried interests and industries of this State represented, and hence there has been no hearing as to these interests and no opportunity to offer evidence or to combat the theories of the opposition or to protect the interests of over four millions of people.

"I insist that not only elementary justice demands, but the law requires a hearing, and a full hearing, before rates are prescribed effecting the traffic of all the people of this State and — which they will be required to pay millions of dollars each year in excess of the rates heretofore prevailing. Such a result would be the taking of
453 the people's property without due process of law.

"Fourth, I understand from traffic experts that an inspection of this tariff will show that there are many contradictory provisions, many that are incongruous, many that discriminate grossly against certain localities and against certain commodities, and lines of business, and in a number of instances the effect thereof will be to put out of business certain important industries.

"For these considerations, and for others, that will be presented in our formal application, and that will be urged by representatives of the varied industries of this State, we respectfully ask a suspension of these rates at your hands and a hearing of our application for suspension, at a date to be set by you.

"Please bear in mind that these rates become effective November first, unless suspended, and as I must leave the city on Monday, October sixteenth, I will thank you, if you grant this hearing on our application for suspension, to name a date in ample time before November first, and wire me that I may notify the representatives of the other interests involved.

"Thanking you for your prompt consideration of this application.

B. F. LOONEY."

The Interstate Commerce Commission replied that the matter of suspending rates named in Tariff 2-B would be submitted to the Suspension Board.

Thereafter, and before the hearing before the Suspension Board of the Interstate Commerce Commission on October 19th, 1916, the Board of City Development of Amarillo, Texas, the Traffic Bureau of Amarillo, The Palestine Traffic League, representing the commercial and shipping interests of the Panhandle section of Texas, as
454 represented by the Commercial Centers of Amarillo, Clarendon, Memphis, Plainview, Texhoma, McLean, Pampa, Canadian, Dalhart, Canyon, Hereford, Bovina, Farwell Texline, Channing, Hartley, Childress, and others filed formal petition with the Interstate Commerce Commission alleging that the railroads, plaintiffs and intervenors herein had filed with the Interstate Commerce Commission Fonda's Texas Lines' Tariff No. 2-B, I. C. C. No. 33, effective November 1st, and further alleging as follows:

"That said tariff purports to be issued in compliance with the orders of the Interstate Commerce Commission in Cases Nos. 8418, 3918, 8290 and I. & S. Docket No. 710.

"Petitioners would show that said tariff and the rates therein prescribed are not authorized or required by any order or requirement of the Interstate Commerce Commission made in said causes or otherwise; and as to the rates prescribed for shipment of intra-state traffic between points in Texas are wholly void and without authority of law, and are in violation of the tariffs prescribed by the Railroad Commission of Texas and the rules, regulations, practices and classification — thereto, and are unjust, unreasonable, and discriminatory. And specially that said tariff and rates create an unjust and unreasonable discrimination against petitioners and the Panhandle Section of Texas, by the increase of existing rates to such an extent as to shut Amarillo and surrounding territory off from the Gulf, as well as from other commercial centers of Texas and will divert the traffic to the jobbing and commercial centers of Oklahoma and Kansas, and to St. Louis and Kansas City, depriving the Panhandle cities and shippers generally of reasonable rates on local traffic to the Panhandle district and between points in the Panhandle district, and shut out Texas commercial centers from that territory west of the Texas interstate common point territory and will not enable Shreveport to meet competition from outside of Texas points, as hereinafter shown in detail."

Said Petition for Suspension of the rates named in Tariff 455 2-B further alleges as follows:

"*Application or Differential Basis Within Differential Territory in 2-B Not Authorized by Order of the Commission.*

"The language of the Opinion at page 110 is as follows:

'We are of the opinion and find that defendants' present class rates between Shreveport and points in Texas west of the present boundary of Texas interstate commonpoint territory are and for the future will be unjust, and unreasonable to the extent that such rates exceed those named as maxima in the above prescribed mileage scale by more than the differential shown in the following table corresponding to hauls in different territory.'

"This is the language of the Opinion in which the Commission makes application of differentials on Texas traffic. The language of the Specific Order in fixing the application of class differentials is as follows:

"(Page- V-VI) 'Class rates between Shreveport and points in differential territory in Texas may exceed the maximum rates above named by the following differentials in cents per 100 pounds corresponding to the haul in differential territory.'

"The language prescribing differentials on the different commodities affected is substantially the same. In Texas Lines' Tariff 2-B, Fonda's I. C. C. 33, Item 1005, naming the schedule of class differentials, the application is as follows:

'Class rates to and from or between points in such differential territory shall be made by adding to the rates shown in Items Nos. 1200 and 1225, or minima, for the total distance from origin to destination

via the route used in determining the rate, the class different
shown below for the actual distance in differential territory (via
route.)'

"The application of differential scales in all commodity rates
ried in this tariff are applied in the same manner to, from, or
tween. There is no authority, expressed or implied, in the Opin
or Order of the Commission for the application of differentials
tween points in differential territory."

The Petition concluded by praying for a suspension of said Ta
2-B and for rehearing and full hearing of the cause general

456 Afterwards, on October 19th, 1916, in said Cause No. 84
Railroad Commission of Louisiana v. Aransas Harbor T
minal Railway, et al., the Suspension Board of the Interstate Co
merce Commission was convened and Mr. S. H. Cowan appeared
attorney for the Texas Industrial Traffic League, American Natio
Live Stock Association, Texas Live Stock Shippers Protective Leag
Amarillo Board of City Development, Panhandle Shippers' Leag
Dallas and Fort Worth Freight Bureaus and lignite interests.

Mr. B. F. Looney, Attorney General of the State of Texas, appea
for the State of Texas and the general freight paying public. Th
were appearances for numerous other commercial bodies, as well
for the Railroad Commission of Louisiana and the plaintiffs and
tervenors in this cause. When said Board was convened, Inters
Commerce Commissioner Hall read the following statement:

"GENTLEMEN: The Commission is in receipt of communicatio
from the Attorney General of Texas, and citizens of various co
munities in that State, requesting the Commission to suspend sch
ules published in the tariff filed by Agent Fonda under his I. C. C.
and the cancellation of rates ordered in Agent Leland's tariff I. C.
1005, which refers to the Fonda tariff for rates after November
1916.

"In response to requests therefor the Commission has called t
informal hearing or conference on the application for suspensi
This hearing will be confined to such allegations as the protestan
may present respecting any of the rates and rules and regulatio
contained in the Fonda tariff which are alleged to be in contraventi
of the Commission's order in the Shreveport cases, and to the pres
tation of any irregularities in any of the filed rates, rules and regu
tions which are alleged not to be responsive to the Commissio
orders.

"I will ask the protestants and others who are here to en
457 their appearances with the Reporter.

"At these informal hearings or conferences it has be
usual for the protestants to first present what objections they ha
and that custom will be followed. From whom shall we hear first

Mr. Cowan then spoke for the interests he represented and the
fendant B. F. Looney, Attorney General of Texas, for the State
Texas and the general shipping public.

A large number of witnesses were examined and much testimo

was introduced and heard specially covering the question as to whether or not the differential rates prescribed in said Fonda Texas Tariff 2-B were in contravention of the Interstate Commerce Commission's order of July 7th, 1916, and whether or not the rates so filed and the rules and regulations prescribed were or were not responsive to the Commission's order.

It was stoutly maintained by the defendant Hon. B. F. Looney and Mr. S. H. Cowan and others that the differential rates prescribed in said Tariff 2-B affecting the movement of intrastate traffic in the differential territory of Texas were not required or authorized by said order of July 7th, 1916.

On the other hand, it was contended by the plaintiffs and intervenors herein that the rates prescribed in said Tariff 2-B were authorized by the said order of the Interstate Commerce Commission and were necessary to remove the discrimination that said Commission had found and adjudged to exist against Shreveport and that said Tariff 2-B, filed with the Interstate Commerce Commission on September 25th, 1916, and the rates therein prescribed, were all in strict compliance with said order of the Interstate Commerce Commission and denied that said tariff and rates were not responsive to the said Commission's order.

The proceedings before said Suspension Board closed on October 20th, 1916, are very volum-nous, covering 405 typewritten pages.

During the proceedings, Mr. L. M. Walter who appeared for the Railroad Commission of Louisiana, made the following
458 statement:

"Does the Commission expect to hear arguments on this differential question? That is going to take up a lot of time. It seems to me that that might very well be left out and save the time of everybody. I cannot see how that is involved here."

Commissioner Hall replied as follows:

"I cannot say what the Board will consider or will present to the Commission, but we want to hear as little argument as possible, and much in the way of facts."

Again, in the course of the proceedings, Mr. Cowan stated that he thought the hearing had been too much restricted whereupon Commissioner Hall said:

"The objection is noted, but counsel is reminded in order to remove any misunderstanding that may exist in the minds of those that are here, of the closing clause of the opening statement, which was this:

'This hearing will be confined to such allegations as the protestants may present respecting any of the rates and rules and regulations contained in the Fonda tariff which are alleged to be in contravention of the Commission's order in the Shreveport Case, and to the presentation of any irregularities in any of the filed rates, rules and regulations which are alleged not to be responsive to the Commission's orders.'

"If there are specific items in this tariff which are said to be discriminatory or unlawful discriminations those items can be brought to the attention of the Board at this station, but as to the reasonable-

ness of the rates which fall within the maximum prescribed by the Commission's order, in so far as interstate rates are concerned, that it is considered, has been passed upon by the Commission and is not reviewable by this Board at this time by these representatives of the Commission at this time, and that will likewise apply to the
459 reasonableness of the intrastate rates which are also contained in the tariff.

"This Commission has not undertaken to pass upon the reasonableness of the intrastate rates. It has found what were reasonable interstate rates, that is, the maxima. It has found that a discrimination existed, a hindrance upon interstate commerce, an obstacle to it, by reason of the maintenance of differing systems of rates for like distances and like traffic, and it has required the carriers to desist from maintaining that unlawful discrimination. That is not indicating to the carriers how they shall remove that discrimination."

In said hearing before the Suspension Board, it was further contended by the State of Texas and the shippers there represented, that the rates prescribed in Tariff 2-B for application in differential territory were not responsive to the said order of the Interstate Commerce Commission, especially the application of the differential rates to traffic originating in differential territory and moving to another point in differential territory and to traffic originating near differential territory in the State of Texas and moving to a point in the State in differential territory.

Afterwards, the Suspension Board made its report to the Interstate Commerce Commission and said Interstate Commerce Commission thereafter made and filed its judgment and order, as in this record set out in full.

460 *Excerpts from Stenographic Report of Informal Conference Before Interstate Commerce Commissioner Hall and Board of Suspension, Beginning October 19th, 1916.*

Commissioner Hall's Statement of the Purpose of the Hearing. Record, Pages 3 and 4.

"Commissioner Hall: Gentlemen, the Commission is in receipt of communications from the Attorney General of Texas, and citizens of various communities in that State, requesting the Commission to suspend schedules published in the tariff filed by Agent Fonda under his I. C. C. 33, and the cancellation of rates ordered in Agent Leland's tariff I. C. C. 1095, which refers to the Fonda tariff for rates after November 1, 1916.

"In response to requests therefor the Commission has called this informal hearing or conference on the applications for suspension. This hearing will be confined to such allegations as the protestants may present respecting any of the rates and rules and regulations contained in the Fonda tariff which are alleged to be in contravention of the Commission's order in the Shreveport cases, and to the presentation of any irregularities in any of the filed rates, rules and

regulations which are alleged not to be responsive to the Commission's orders.

"I will ask the protestants and others who are here to enter their appearances with the Reporter.

"At these informal hearings or conferences it has been usual for the protestants to first present what objections they have, and that custom will be followed. From whom shall we hear first?"

"Statement of Mr. S. H. Cowan.

"Mr. Cowan: If your Honor pleases, I have entered an ap-
461 pearance for the Texas Industrial Traffic League, which is composed of the principal commercial organizations in Texas, of the different cities and commercial centers, and some industrial concerns besides the localities; also a representation of the Panhandle and Amarillo people through their organization, and of the livestock rates through the organizations of the stock men with respect partly to the Fort Worth market and partly to the general situation known as the Texas Livestock and Shippers Protective League.

"We have prepared petitions of protest for suspension, which have been printed, setting forth the ground upon which we ask for the suspension of this tariff, somewhat in detail, each petition presenting the specific reasons which apply to that particular business or interest named, and generally to the same general propositions respecting the construction to be placed upon the order of the Commission, and the complaint that the schedule which the railroads have prescribed is not required by the Interstate Commerce Commission and is not in fact justified by the order of the Commission, and with the tariff which purports to be a complete schedule of all rates in the State, with certain exceptions named, and including within those exceptions the articles which the Commission did not consider on account of the fact that the Texas Commission had amended certain rates on some certain commodities, I think about thirty in number, and except rates also along the Gulf coast." Record p. 5.

Evidence of Mr. Grant S. Maxwell, Record 111-118.

"Take the rate from Shreveport to Odessa, a point on the Texas & Pacific. It is considerably less than the rate from Austin to Odessa, notwithstanding the fact that the distance from Austin to Odessa is considerably less than the distance from Shreveport to Odessa.

"Mr. Thurtell: Is that for the same reason?

"Mr. Maxwell: No. The reason for that is that you run into the maximum rate and then the full differential is applied for
462 the full distance. You reach the maximum rate at Big Springs in both instances—the difference in the distances in the twilight zone created by your 400-mile limit. The differential is exactly the same in both cases because as published the railroads apply the differential in all cases where a shipment moves in dif-

ferential territory regardless of whether or not it is 10 miles or whether or not it is 450 miles.

"Mr. Thurtell: What do you think they ought to have done in regard to that, Mr. Maxwell, under your interpretation of the order? For instance in these shipments from San Antonio to Uvalde—that is a point you named, the shipments move in common point territory for a certain distance—I assume less than 245 miles, certainly less than 400 miles, do they not?

"Mr. Maxwell: Oh, yes.

"Mr. Thurtell: What do you think should have been done there?

"Mr. Maxwell: I think that in publishing these rates—in the first instance, in issuing the order, I think the Commission had in mind that possibly the railroads would follow the rule that has been laid down by the Railroad Commission of Texas in applying these differentials.

"Mr. Thurtell: It must move 245 miles.

"Mr. Maxwell: That the differentials are applicable only to the maximum rate. In other words the shipment has got to move far enough to take the maximum rate by mileage before the differential is added.

"Mr. Thurtell: Yes, it was 245 miles?

"Mr. Maxwell: It was, yes.

"Mr. Crosland: That would mean regardless of what territory it was in, either common point or differential?

"Mr. Maxwell: Yes. If the shipment moved 50 miles or 100 miles in common point territory, and 45 miles in differential territory, the rate was 245 miles, and no differential added. If another movement was in differential territory the straight rate ap-
463 plied and there was no differential added. If the total movement was 260 miles the 245 mile rate plus the differential for 15 miles was added.

"Mr. Thurtell: Do you think that was justifiable under the circumstances existing, as asserted by everyone who was a witness in the case that the traffic was less dense in differential territory than it was in common point territory, as a rule; and that on that account those differentials had been allowed. If that is the case should not the short line distance, should not the traffic moving by the short line distance, say 200 miles in differential territory, take something higher than when moving 200 miles in common point territory?

"Mr. Maxwell: Possibly on some of the side lines that do not have the benefit of through traffic. But all of the trunk lines have the benefit of through traffic, so that so far as the density of their traffic is concerned, I think it will be found practically as large as the density in the territory further east. For instance, it is well known that the Southern Pacific has a very heavy transcontinental traffic which traverses their line from El Paso to San Antonio; the Texas & Pacific from El Paso to Big Springs, the Santa Fe, through their entire lines in Texas, on account of their Galveston line through west Texas and out through Texico; the Ft. Worth & Denver, on account of its connection with the Colorado & Southern

and Rio Grande, through Colorado and Utah and coming down—all of those are trunk lines and have a very large amount of transcontinental traffic which brings their density up to a point that can be very well compared with the density which occurs on a good many of the lines in eastern Texas. It might not be as great as the density would be upon these same lines which participate in a part of the transcontinental traffic and also have their north and south business to increase the density. But as applied to some of the short lines that are dependent entirely upon what they produce and what they consume, having no opportunity to
464 participate in through traffic, I think possibly there might be some exception to the rule in those cases.

"Mr. Jones: On your theory would there not be substituted for the differential territory a system of differential distances?

"Mr. Maxwell: How is that?

"Mr. Jones: Would there not, on your theory, be substituted for differential territory a system of differentials distances?

"Mr. Maxwell: For application to certain lines?

"Mr. Jones: Making an exception as to certain lines?

"Mr. Maxwell: The differentials as applied in connection with rates from St. Louis are altogether different from the differentials provided here. There does not seem to be much uniformity about those. In fact the differentials applied on the Southern Pacific west of San Antonio are different from those applied on the T. & P. west of Big Springs, and likewise on the Ft. Worth & Denver north of Quanah.

"Mr. Crosland: Your theory though would knock out the differential territory as described in these tariffs and it might be, so far as Mr. Jones says, a differential distance—it might be in east Texas or West Texas, it matters not which?

"Mr. Maxwell: Yes. I have no doubt but what there are some places in east Texas,—that is, east Texas as defined by this Commission in this case; there may be some instances there where lines could very well be accorded differentials; no doubt they would be glad to obtain them if competitive conditions were such as would enable them to accept them.

"Mr. Thurtell: Take the situation as it stands now under the present rates. You apply a common point rate all through that common point territory. Traffic can move under the common point rate four or five hundred miles and reach its maximum maybe
465 at 40 or 50, certainly at 60 or 70 miles, and for all that distance no differentials are authorized or applied; but let the traffic move 240 miles in common point territory and then move into differential territory, and immediately those differentials begin to apply.

"Mr. Maxwell: Under the present system.

"Mr. Thurtell: Under the present system. Now they must apply for a certain reason, and the Texas & Pacific and the Southern Pacific are not excluded from enjoying those differentials. It does not apply alone to the weaker lines in that territory; it applies to all of the lines, as it stands now. Presumably those differentials

have been put there for a reason, have been permitted or authorized for certain reasons, namely, that traffic on those lines was less dense. That is probably the reason, the controlling reason. It would seem that if that reason is to be regarded on traffic which starts in common point territory and afterwards moves into differential territory, it ought at the same time to be regarded on traffic which starts in differential territory, and as it had no other movement in differential territory ought not the same scale to be applied there as is applied in the common point territory? To be logical, to carry it out to a conclusion, it seems as if it was the only conclusion to reach.

"Mr. Maxwell: Mr. Thurtell, you will pardon me for saying that that sounds all right. It is a very good theory. But in practice it does not work out. It creates discriminations that I do not believe were ever intended in this tariff. When I say discriminations I mean as between Shreveport and Texas.

"Mr. Thurtell: Yes.

"Mr. Maxwell: I am sure that this Commission did not intend to burden Texas with a lot of discriminations in order to remove all of these alleged discriminations that Shreveport has claimed.

"Mr. Thurtell: Undoubtedly, but would it be a discrimination, Mr. Maxwell, if from Texarkana for a distance of 250 miles down through Ft. Worth, we will say 300 miles down through Ft. Worth, the rate was less than it was from some point in differential territory, moving to that same point of destination, over a like distance of 300 miles. Because the rate from the East for 300 miles is less than the rate from the west for 300 miles, is that discrimination necessarily?"

"Statement of U. S. Paukett on Behalf of the Texas Industrial Traffic League.

"Mr. Paukett: Mr. Commissioner, I appear here in line with the petition filed by the Texas Industrial Traffic League, and as vice president of that organization. It will not take me long to recite what I want to say, for the reason that a great deal of it has been dwelt upon, but with reference principally to the differential rules provided in this tariff 2-B, item No. 1005, I wish to say that the rule as provided in this tariff is revolutionary in rate-making, something that is entirely new to the railroads, until it was suggested by somebody in a secret conclave at Austin. It had never been applied or suggested prior to that time. I was one of those commercial representatives who approached the carriers during that meeting at Austin, and asked for a conference for the express purpose of discussing the order in Docket 8418, with the sole view of eliminating or getting past any questions that might lead to controversies such as we have here today. I was given the advice that when they wanted to talk to me they would let me know, and subsequently was advised that the carriers had reached their decision in regard to the application of the Commission's order, and did not want to confer with anybody; that if we wanted

467 further information, we should proceed to the Commission to get it.

"We feel that the application that is given to this differential rule in item 1005 is not only in contravention of the intent of the order in docket 8418, but, as a result, creates exactly that condition which the Commission in the order at page 128, as read by Mr. Maxwell, expressly disclaimed any desire or intention of doing, bring about a discrimination as between localities in Texas.

"This application of this rule brings about discriminations not only between localities and in contravention of the Commission's plainly announced intent, but as between commodities.

"We further conclude that the tariff contravenes or exceeds, at least, the order of the Commission in this case in other respects.

"Now, the history of the differential basis in Texas is found fully in Docket 7628, and of which I have had personal knowledge for a great many years. Prior to, I think, 1900, a rate based on a maximum distance of 185 miles was in effect, before the Railroad Commission of Texas was created, and was perpetuated by an order of the Railroad Commission of Texas, continuing in effect such rules, rates and regulations as the railroads at that time had currently in effect, as I say, until changed by further order of the Commission. That was never changed except to extending the mileage to 245 miles as a maximum.

"It was understood, and not contravened by the carriers, that in fixing this scale of rates for distances, first, reaching a maximum of 185 miles, and latterly a distance of 245 miles, that those figures were compensatory for the carrying of traffic any given distance up to that maximum distance within the state of Texas, with certain exceptions which were specifically provided for.

"Instead of doing in Texas as some other states have done, of grouping the goods, as classes A, B, C, D, etc., the Texas Commission authorized the application of special differentials or
468 special rates to cars for these short or cross lines in the sparsely settled and light traffic territory, instead of, as I say, giving them those class designations so as to give them a revenue on their local business, which is all that they had to draw from, and that condition has existed up to this time.

"That rule was never put into effect on the Sunset Central Lines, so called, on the Texas & Pacific, on the Santa Fe system lines in Texas, because of the fact that the rates for a given distance of 245 miles or under were figured to be compensatory for the services performed, and beyond that the general scale of differentials.

"Taking the plain statement of the Commission in this order, that they would not desire to bring about any relation intra-state that would effect discriminations between those places, I want to refer to the situation of San Antonio.

"We are on the edge of the so-called differential territory, and under the rules voluntarily established by the carriers probably in the neighborhood of forty years ago, or at least when the railroads were extended west from San Antonio, we have been able to ship westward at the same rate per hundred pounds for a distance of 200

or 245 miles. If we ship 10 miles east now, we pay the 10 mile rate and the 10 mile differential.

"I believe that this rule contravenes the plain intent of the Commission, which was dealing with the movement of traffic to and from Shreveport, and which, in every instance, would necessarily have to travel in excess of the maximum distance prescribed, of 400 miles, before it could reach differential territory.

"The short line mileage from Shreveport to San Antonio, I think, is 441 miles. The short line distance from Shreveport to Acme likewise to Big Springs is in excess of 400 miles. Therefore, the language used by the Commission in its order with respect to
469 traffic moving to and from Shreveport was entirely proper. It provided that the traffic should move 400 miles before a differential could be applied, giving Shreveport the benefit, if you please, of its geographical location, and we submit that in doing that, reserving to Shreveport the benefit of all of these situations, in all respects, San Antonio, as a Texas point, should have the complement of that, and to give it the benefit of its geographical location. Furthermore, in constructing this scale of rates——

"Mr. Walter: Does not that all go to the measure of the rate instead of the question that we have here?

"Mr. Paukett: No, sir; it does not.

"Mr. Crosland: San Antonio never would have any shipments in differential territory.

"Mr. Paukett: It would never have anything else than differential territory west.

"Mr. Crosland: I mean under your interpretation of the intent of the Commission's order there.

"Mr. Paukett: Oh, yes. We would have more than 200 miles of differential territory. The distance to El Paso, for instance, is 623 miles.

"So much on that.

"Now, as to compliance of this differential proposition with the order, we find, by referring to items 1400 and 1445, applying on common brick, a differential is provided for, whereas in paragraph VI, of the Commission's order, no such provision is made, this being in excess of the authority conferred by the Commission. There has never been a differential applied within the state of Texas on intrastate business. The same thing is true of firebrick. The scale ran out at 750 miles.

"The same was true with respect to lignite, as shown in item 1670 and item 1675, providing for the application of differentials
470 whereas in clause 7 of this same paragraph of the order, to be found on page 7, no differential application is provided for.

"In the case of lignite, the rates have run out to a distance of 700 miles, further than it is possible for lignite to move locally, a commodity that can only move locally, and the record as to the lignite hearing before the Railroad Commission of Texas in June, 1915, and made a part of the record in this 8418, will show that 90 per cent of the lignite movement was under a distance of 175 miles.

"Mr. Thurtell: Now, let us get clear about this common stock mat-

ter. Under the order of the Commission the rates on common brick might be 40 per cent of class E up to and including 300 miles. The class E rate for 300 miles is 25 cents. 40 per cent of that is 10 cents, so that the rate for 300 miles and less would be 10 cents. If that be increased 5 mills per hundred pounds for each 25 miles in excess of 300, for that hundred miles it would be increased 2 cents; it would run up to 17 cents per hundred pounds, which would be the maximum rate applied in Texas. Is not that the maximum rate in these tariffs, or is it?

"Mr. Paukett: That is a continuous mileage scale.

"Mr. Thurtell: Well, what is the rate that is put in the tariff?

"Mr. Paukett: 17 cents for over 625 miles, but in item 1425 they provide for a differential adjustment.

"Mr. Thurtell: What kind of a differential adjustment; what is the resulting rate? That is what I want to get. 17 cents is the maximum rate authorized by the Commission.

"Mr. Paukett: I would have to figure that out, Mr. Thurtell.

"Mr. Thurtell: Well, that is what you are complaining about.

"Mr. Paukett: It may be the maximum rate. The proposition is this, that they provide for the entire distance traveled in differential territory under the general application of their differential item, No. 1005, so that if we forward a shipment where differentials are provided, for a distance of 10 miles west of San Antonio, we pay the 10 mile rate and the 10 mile differential. That is what we are objecting to, as subjecting San Antonio, for instance, to discrimination in favor of some other locality further removed."

471

Excerpt from Page 178 of Record.

"Mr. Walter: Does the Commission expect to hear argument and testimony on this differential question? That is going to take up a lot of time. It seems to me that that might very well be left out and save the time of everybody. I cannot see how that is involved here.

"Commissioner Hall: I cannot say what the Board will consider or will present to the Commission, but we want to hear as little argument as possible and as much in the way of facts. That is the sentiment of this Board, I think. Do I voice your view, Mr. Chairman?

"Mr. Crosland: Yes, sir."

Mr. Cowan's Statement, Pages 181-193 of the Record.

"Proceedings.

"Commissioner Hall: You may proceed, gentlemen.

"Mr. Cowan: Mr. Commissioner, before we proceed, I wish—of course, not to attempt to change the conclusions that have been reached by the Suspension Board and by the Commission with respect to matters to be heard here, but in order that it may be clear upon the record of this hearing—in behalf of a number of representative shippers who are here, to present a formal objection, that the

Suspension Board has not heard the questions which
473 mostly the shippers, that is, the — pertaining to what the dis-
criminations may be and what unreasonable rates may be
contained in tariff No. 2-B, and to object to confining the investi-
gation of the Suspension Board on the application for a suspension
to the question, as we understand it, of whether or not the tariff No.
2-B contravenes the order of the Commission, and with the suggestion
along with that objection that if the tariff, by reason of matters of
fact or comparisons of rates, really creates discrimination or pre-
scribes rates which are unreasonable, or by the application of a classi-
fication which brings about either an unreasonable rate of a dis-
crimination, that those are matters which the shippers desire, of
course, to present upon their application for the suspension, but
understand it to be the ruling that they are confined, so far as the
matters to be presented by them here are concerned to the question
as to whether or not these rates in the tariff are in accord with the
rules of the Commission, or whether they contravene the order of
the Commission; and that although some other rates or some other
standards might have been adopted which were not contrary to the
order of the Commission, still there is only the question here to de-
termine what, if any, of these rates contravene the order of the Com-
mission.

"I wish that to go in by way of objection, that the hearing on the
subject has been, as we think, too much restricted.

"That is just a mere formal objection, in order that we may not
have been supposed to have concurred in the idea that we did not
have a right to present all these matters, that is, with due respect and
obedience, of course, to the ruling of the Commission and the Sus-
pension Board.

"Commissioner Hall: The objection is noted, but counsel is re-
minded, in order to remove any misunderstanding that may
473 exist in the minds of those that are here of the closing clause
of the opening statement, which was this:

" 'This hearing will be confined to such allegations as the protest-
ants may present respecting any of the rates, rules or regulations con-
tained in the Fonda Tariff which are alleged to be in contravention
of the Commission's order in the Shreveport cases, and to the pre-
sentation of any irregularities in any of the filed rates, rules or reg-
ulations which are alleged not to be responsive to the Commission's
orders.'

"If there are specific items in this tariff which are said to be or
claimed to be discriminatory and unlawfully discriminatory, those
items can properly be brought to the attention of the Board at this
stage, but as to the reasonableness of the rates which fall within the
maxima prescribed by the Commission's order, in so far as interstate
rates are concerned, that it is considered has been passed upon by
the Commission and is not reviewable by this board at this time, by
these representatives of the Commission at this time, and that will
likewise apply to the reasonableness of the intrastate rates which are
also contained in the tariff.

"This Commission has not undertaken to pass upon the reasonableness of the intrastate rates. It has found what were reasonable interstate rates, that is, the maxima. It has found that a discrimination existed, a hindrance upon interstate commerce, an obstacle to it, by reason of the maintenance of differing systems of rates for like distances and like traffic, and it has required the carriers to desist from maintaining that unlawful discrimination. That is not indicating to the carriers how they shall remove that discrimination."

Judge Garwood's statement, Record, 186, and response of Commissioner Hall thereto, showing that they both understood that it was the purpose of the hearing to hear all objections that could be urged to Tariff 2-B on the point whether the same was in
474 compliance with or responsive *with* the order of the Commission.

"Mr. Garwood: Your Honor, it is apparent to me that this objection is made purely for the purpose of making a record, and we wish it thoroughly understood that if these protestants have any reason to urge by reason of criticism of this tariff, as to whether or not it is in compliance with the order of the Commission, or whether it violates any of the rules or regulations of the Commission, they should now present them. We do not want this record to show, as it occurs to me that this objection is made for the purpose of laying a predicate for the contention that these protestants were shut off in any way from the presentation of any proper objection to this tariff as promulgated by the carriers, and we wish this record to show that they have had full and ample opportunity to present every objection of that character.

"Commissioner Hall: I think the situation ought to be clear. In a nut shell, it is thus: We are not assembled here to review the report or order of the Commission. We are here to consider a tariff which has been filed, purporting to be in compliance with that report and order, and the specific objections that are made to items there, but under the guise of considering that tariff, this is not the time or the way or place in which to present contentions or statements or views with regard to the merits of the Commission's report and order. That is subject to reconsideration on a proper application elsewhere, by the Commission itself, but not here. Is that plain, gentlemen?"

Mr. U. S. Paukett's Statement, Record, pages 188 to 191.

"Statement (Continued) of Mr. U. S. Paukett on Behalf of the Texas Industrial Traffic League.

"Mr. Paukett: Mr. Commissioner, with reference to the ap-
475 plication of the Commission's order to stone, sand and gravel, with which we concluded yesterday, we make the contention that a differential is applied to this business for distances 300 miles

and under, in contravention of the Commission's order in this ca
the tariff showing that the scale of rates therein provided will n
apply for distances up to and including 350 miles from or to poin
in differential territory, but as the only producing point in differe
tial territory is within that distance, the differential is applied.

"The Commission's order, at page 112, makes no such provisio

"Now, taking a producing point in differential territory situat
approximately 81 miles west of San Antonio, that produces, accord
ing to the different groupings, a discrimination of 20 cents in on
instance and 20½ cents in alternate instances, according to th
groupings per ton of 2000 pounds; a difference which *would*, on a
count of the cheapness of the commodity and the close margin o
which it is handled, is absolutely prohibitory and discriminates a
between localities. The last statement made by the manager of th
institution was that they would be forced to close if that adjustme
as to differentials is maintained.

"Commissioner Hall: You are speaking specifically of what pr
ducers there, of what persons?

"Mr. Paukett: Of the Texas Trap Rock Company at Knippa——

"Commissioner Hall: At where?

"Mr. Paukett: At Knippa, Texas, approximately 81 miles west o
San Antonio.

"That same difference runs up to a distance of 350 miles, withi
which distance probably 95 per cent or practically a hundred pe
cent of the business moves. My information is that there have bee
but very few tons of the business shipped beyond, and that was th
case of just a few cars to Dallas. This is an institution that is toda
paying the G. H. & S. A. Railway $30,000 a year freight charge
and the closing down of which will reduce instead of increa
470 ing the revenues.

"Mr. Thurtell: How far is that into differential territory

"Mr. Paukett: To be correct, Mr. Thurtell, I think it is 80.8 mile

"Mr. Thurtell: Now, I just want to see how this works out. Th
is sand and gravel that you are talking about?

"Mr. Paukett: Crushed stone; yes, sir.

"Mr. Thurtell: The crushed stone rate?

"Mr. Paukett: Yes; 10 cents less than the rough stone rate.

"Mr. Thurtell: That is one-third of class E rate, is it not?

"Mr. Paukett: I think that is it; yes, sir—one-third of class E
less 10 cents per ton.

"Mr. Thurtell: For distances of 80 miles the class E rate is 1
cents. One-third of that would be 4 cents. If the differentials we
applied on that, the differential would be 2 cents. Twelve cents an
2 cents would be 14 cents. One-third of 14 cents would be 4 2/
cents. That would be 86 cents a ton for 80 miles, would it not?

"Mr. Paukett: It is shown as 70 cents per ton for a distanc
of——

"Mr. Thurtell: It would be 90 cents.

"Mr. Paukett: Ninety miles and over eighty miles. That is wit
out differential territory. The differential for 80 miles is 2 cent
For 90 miles and over 80——

"Mr. Thurtell: It is 3 cents.

"Mr. Paukett: Three cents, which would make——

"Mr. Thurtell: Make a difference of a cent.

"Mr. Paukett: Twenty cents per ton, as I have stated.

"Mr. Thurtell: I see.

477 "Mr. Paukett: That is something they could not overcome. That agrees with the figures I have here, Mr. Thurtell.

"The same remarks as to the differential application will apply to lignite, varying only with the volume of the rate, that being 25 per cent of class D, and no provision being made in the Commission's order at pages 112 and 113, for such differential application.

"Therefore, as we construe the Commission's order and this tariff, it contravenes the order in that respect.

"The application of the basis proposed on lignite, which, as testified, is purely an intrastate business, is such as to have caused the issuance of orders for the closing down of the mines on the 31st day of October, because the situation with respect to fuels that it is in competition with, and has been for a considerable number of years, is unchanged. The interpretation given by the carriers in the issuance of this tariff to differential rules produces discrimination as between localities in Texas."

Statement of Mr. Hamlin Palmer, Record, p. 232 and 234.

"It is our understanding that the order of the Commission interpreted by all ordinary rules, does not provide for the application of a differential basis for all distances between points in differential territory. The effect of the application of the differential basis is peculiarly shown by the competitive conditions which it establishes between the Panhandle territory and points in Oklahoma." * * *

"Mr. Crosland: Are you claiming that all of these rates are in this tariff and not in compliance with the order of the Commission?

"Mr. Palmer: Yes, sir. I started out with the statement that we take the position that the application of the differential basis between points in differential territory is not in accordance with the order of the Commission."

478 *Orders Entered by Interstate Commerce Commission in I. & S. Docket No. 958, Suspending Rates on Cattle, Lignite, Wood and Tan Bark.*

The plaintiffs introduced and read in evidence the following orders entered by the Interstate Commerce Commission in I. & S. Docket No. 958, suspending rates on cattle, lignite, wood and tan-bark, towit:

"At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 31st Day of October, A. D. 1916.

Investigation and Suspension Docket No. 958.

Shreveport-Texas Cattle, Lignite, Wood and Tan Bark.

"It appearing, That there have been filed with the Interstate Commerce Commission by A. C. Fonda and F. A. Leland as agents for certain carriers, tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 1st day of November, 1916, designated as follows:

A. C. Fonda, Agent: I. C. C. No. 33;

F. A. Leland, Agent: Supplement No. 62 to I. C. C. No. 1005, Supplement No. 8 to I. C. C. No 1121, Supplement No. 6 to I. C. C. No. 1141.

"It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety and the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz:

A. C. Fonda, Agent: I. C. C. No. 33, on title page thereof, the provision reading '(Cancels I. C. C. No. 16, Except Items Under Suspension in Supplements Nos. 33 and 35, Under I. & S. Docket No. 837)' insofar as said provision cancels rates, charges, regulations, and practices published in tariff I. C. C. No. 16 as amended, applicable to the transportation of Cattle; Stock Cattle, not in condition for slaughter; Lignite; Cordwood; and Tan Bark; in carloads; on pages 114, 115 and 116 thereof, in Rate Sections Nos. 23 and 24; and the minimum carload weights of Cattle and the rates in columns Nos. 1 and 3 in Rate Sections Nos. 25 and 26; and on pages 121 and 122 thereof;

F. A. Leland, Agent: Supplement No. 62 to I. C. C. No. 1005, insofar as same cancel the schedules contained in Items Nos. 479 2026-B, 2032-B and 2038-B on page 60 of Supplement No. 59 to I. C. C. No. 1005; Supplement No. 8 to I. C. C. No. 1121, on page 4 thereof, in Item No. 150a insofar as same cancel rates on Cattle and stock cattle; on page 6 thereof, in Item No. 1278d and the explanation of the reference mark "1 in a circle" insofar as same increase or cancel rates on cattle from Shreveport, La., and points taking same rates; on page 9 thereof, in Items Nos. 1296a, 1298a, 1302a, 1304a, 1320a, 1326a, 1332a and 1416a; and on page 10 thereof, in Item No. 1800a; Supplement No. 6 to I. C. C. No. 1141, on page 6 thereof, in Item No. 96a insofar as same cancel rates on Cattle and stock cattle; on pages 17 and 19 thereof, providing for the cancellation of rates on cattle from Shreveport, La., and points taking same rates; on pages 26, 27, 28, 29, 30 and 32 thereof, in Items Nos. 2508a, 2586a and 2592a, in Item No. 2634a insofar as same cancel rates on cattle (not in condition for

slaughter) to Bossier City and Shreveport, La.; in Items Nos. 2670a, 2676a, 2682a and 2694a.

"It further appearing, That said schedules make certain changes in rates for the transportation of cattle; lignite; cordwood; and tan bark; in carloads, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

"It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred until the 1st day of March, 1917, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

"It is further ordered, That the rates and charges thereby sought to be changed shall not be increased and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

480 "And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules, and upon A. C. Fonda and F. A. Leland, Agents, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be fully notified of the time and place of the hearing above ordered.

"By the Commission:

[SEAL.] GEORGE B. McGINTY,
Secretary."

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 13th Day of December, A. D. 1916.

Investigation and Suspension Docket No. 958.

Shreveport-Texas Cattle, Lignite, Wood and Tan Bark.

First Supplemental Order.

"It appearing, That there have been filed with the Interstate Commerce Commission by F. A. Leland as agent for certain carriers, tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective, except as other-

wise noted herein, on the 17th day of December, 1916, designated as follows:

F. A. Leland, Agent: Supplement No. 10 to I. C. C. No. 1121, Supplement No. 12 to I. C. C. No. 1121 and Supplement No. 13 to I. C. C. No. 1121

"It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety and the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, on pages 6 thereof, in Items No. 1278e and the explanations of the reference mark '1 in a circle' insofar as same increase or cancel rates on cattle from Shreveport, La., and points taking same rates.

"It further appearing, That said schedules make certain changes in rates for the transportation of cattle, in carloads, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules, contained in said tariffs
481 should be postponed pending said hearing and decision thereon;

"It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate traffic until the 16th day of April, 1917, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

"It is further ordered, That the rates and charges thereby sought to be changed shall not be increased and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

"And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules, and upon F. A. Leland, Agent, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

"By the Commission:

[SEAL.] GEORGE B. McGINTY,
Secretary."

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 16th of Feby., A. D. 1917.

Investigation and Suspension Docket No. 958.

Shreveport-Texas Cattle, Lignite, Wood and Tan Bark.

"It appearing, That by an order dated the 31st day of October, 1913, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, stated in schedules contained in tariffs, designated as follows:

A. C. Fonda, Agent: I. C. C. No. 33;

F. A Leland, Agent: Supplement No. 62 to I. C. C. No. 1005, Supplement No. 8 to I. C. C. No 1121, Supplement No. 6 to I. C. C. No. 1141

482 It further appearing, That pending such hearing and decision the Commission ordered that the operation of certain schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations and practices, therein stated, be deferred upon interstate traffic until the 1st day of March, 1917, and

It further appearing, That such hearing cannot be concluded within the period of suspension above stated,

"It is ordered, That the operation of the schedules specified in said order dated the 31st day of October, 1916, be further suspended, and that the use of the rates, charges, regulations and practices therein stated be further deferred upon interstate traffic until the 1st day of September, 1917, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

"It is further ordered, That the rates and charges thereby sought to be changed shall not be increased and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

"And it is further ordered, That a copy of the order be filed with the said schedules in the office of the Interstate Commerce Commission and that copies hereof be forthwith served upon the respondents to this proceeding and upon A. C. Fonda and F. A. Leland, Agents.

By the Commission:

[SEAL.] GEORGE B. McGINTY,
Secretary."

Order of the Interstate Commerce Commission, of Date January 26, 1917, Granting Rehearing in Causes Nos. 8418, etc.

Plaintiffs introduced and read in evidence the order of the Interstate Commerce Commission, of date January 26th, 1917, granting a rehearing in Causes Nos. 8418, etc., which order reads as follows:

"Report of the Commission on Petitions for Reopening.

"HALL, *Commissioner:*

"The history of these proceedings is set forth in Railroad Commission of La. v. St. L. S. W. Ry. Co., 23 I. C. C., 31; Railroad Commission of Louisiana v. St. L. S. W. Ry. Co., 34 I. C. C., 472; and Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C., 83.

"In our report in Railroad Commission of Louisiana v. A. H. T. Ry. Co., supra, decided July 7, 1916, we found, in brief, that the class rates and rates on certain specified commodities between Shreveport, La., and points in Texas were unreasonable and unduly prejudicial to Shreveport as compared with rates for like distances in Texas; and that the application to the transportation of property within Texas of classification rules different from and minimum carload weights lower than those applicable to transportation of like property between Shreveport and Texas points was unduly prejudicial to Shreveport. Reasonable maximum rates between Shreveport and Texas points were prescribed and the undue prejudice found to exist was ordered removed, the order accompanying the report becoming effective November 1, 1916.

"Subsequent to the promulgation of this report and order, but before the effective date of the latter, petitions were filed on behalf of the state of Texas, the Attorney General of Texas, and various localities and commercial interests of Texas, asking for the suspension of the tariff purporting to comply with our order and for a full hearing in respect of the rates contained in that tariff.

"Informal hearing was had October 19 and 20, 1916, on these requests for suspension. At this hearing full opportunity was afforded for the presentation of objections to the proposed rates. As a result we suspended the operation of items in the tariff naming rates on several commodities pending an investigation of the propriety
484 thereof; but a majority of the Commission declined to suspend the tariff in its entirety.

"Some of the petitions asked that these proceedings be reopened. Upon consideration thereof we ordered that oral argument be had on December 6, 1916, to determine (1) whether or not these proceedings should be reopened, and, if so, for what purpose and to what extent; and (2) if reopened, what further parties, if any, should be permitted to intervene.

"Argument was had; numerous exhibits were submitted; and briefs were filed, both then and later. In so far as was possible within the

limited time at our disposal every interested person, association, and community was heard, and all briefs and exhibits tendered were received.

"It is impracticable to restate here all that was urged in opposition to or in support of our report and order of July 7, 1916, and the tariff purporting to comply therewith. The attorney general and assistant attorney general of Texas appeared on behalf of that state and of the Railroad Commission of Texas. They challenge our jurisdiction under the act to make the order in question, but say that, assuming there was no question concerning jurisdiction; additional evidence bearing upon the issues in this proceeding will be submitted if the proceedings are reopened. They further urge that we suspend the tariff purporting to comply with our order of July 7, 1916. In addition to what was said on behalf of the state of Texas as a whole, individuals, associations, and communities representing various interests in Texas presented what they conceived to be instances of hardship which would result from the operation of the tariff filed pursuant to our order.

"The position of the carriers and of the representatives of the Shreveport Chamber of Commerce is that our jurisdiction is beyond question; that our order is supported by ample evidence; that it is appropriate to effect the proper disposition of the issues presented; and that the tariff filed by the carriers in response thereto complies with its terms. On behalf of the carriers it was stated that occasional instances of hardship where the rates contained in the tariff under attack are on a higher level than corresponding rates into Texas from points in Oklahoma, for example, will be eliminated by increasing the latter rates, which are it is said, at present lower than is
485 just and reasonable. We have recently been advised that tariffs purporting to eliminate these alleged instances of hardship have been filed.

"The Railroad Commission of Louisiana, complainant in this proceeding, advises that it 'will not appear in opposition to application of Texas authorities and shippers to reopen Shreveport Rate Case or to oppose any new parties to the case if it is reopened.'

"These proceedings were discussed at length in our thirtieth annual report to the Congress, submitted December 1, 1916, at page 80 et. seq.

"After quoting from our report of July 7, 1916, supra, we said, at page 89:

We call to mind once more the fact previously noted, that this Commission has not reached out in a spirit of aggression to lay its hands on situations involving the principles of the Shreveport Case. While we have decided over 50 of such cases, and more are being presented to us from time to time, we have dealt with them in the regular line of official duty. * * *

The vital question is, What is the nature of the problem, and through what agencies and by what methods can that problem best be solved in the interest of the whole public?

* * * In the Shreveport Case proper, the history of which has been recited above, we had the assistance of the authorities of only

one of the states concerned in addition to counsel for interested parties. In other cases, involving the same principles, we have had the active co-operation of the respective state commissions. This co-operation was entirely voluntary and without status under the act to regulate commerce, except in so far as the respective state commissions acted in the capacity of interested parties of record.

"In our report to the Congress we also said, at page 87:

At the hearing on the original complaint counsel for complainants stated of record that the Railroad Commission of Texas had been invited to participate in the proceeding, but had made no reply. At subsequent hearings, as stated in our reports, 34 I. C. C., 472, 475, 41 I. C. C., 83, 86, representatives of the Texas commission were present, but took no part in the proceedings.

"We are not advised as to the reasons prompting the Railroad Commission of Texas to refrain from participation in these proceedings until after the issuance of our report and order of July 7, 1916. Presumably they were sufficient for that body in the exercise of its discretion, and it is not our province to consider them. There is no provision in the act for compelling any party to intervene in a proceeding before us, and such participation would necessarily have been entirely voluntary.

"The situation now presented is that the state of Texas and the Railroad Commission of Texas, represented by the constituted authorities of that state, wish to have these proceedings reopened, on the ground that new and material evidence will be submitted and
488 that the authorities of the state will co-operate with us in bringing about a just and reasonable settlement of this question. The authorities of the state of Louisiana do not object to such a reopening.

"The Texas authorities appreciate the fact that as the tariff under attack became effective November 1, 1916, except as to items suspended by us as noted above, we have no power to suspend its operation, but urge that the same effect, as to intrastate traffic, can be secured by vacating and setting aside our order of July 7, 1916. With this suggestion we are unable to agree. Our order was made after careful consideration, upon the basis of a voluminous record. To vacate this order might have the effect of reinstating many of the discriminations formerly existing which have been shown to be real and material and of long standing. Argument has been had since that order was entered, but no further evidence in the strict sense of the word has been submitted. In the absence of a showing of error in our report and order, we are of opinion that the order should stand pending the further proceedings now contemplated.

"The desirability of co-operation with the state authorities is, however, obvious. Under the circumstances recited above we are of the opinion and conclude that these proceedings should be reopened for further hearing, the order of July 7, 1916, to remain in full force and effect pending such hearing, and decision thereon.

"An appropriate order will be entered."

487 *Testimony Given Before the Interstate Commerce Commission in Railroad Commission of Louisiana v. Aransas Harbor Terminal Company et al.*

488 Testimony given before the Interstate Commerce Commission in Railroad Commission of Louisiana v. Aransas Harbor Terminal Company et al.

Testimony of Mr. Gentry Waldo (Pps. 4180-4196 and 5817-5820).

I will pass on now to the discussion of differential rates.

Exhibit Number 11 is a comparison of the profiles of three of the most important lines in differential territory with seven of those in common point territory all drawn to the same scale.

(Blue print in question, consisting of one sheet, so offered and identified was received in evidence and thereupon marked Defendants' Exhibit Number 11, Witness Waldo, received in evidence May 17th, 1917, and the same is attached hereto.)

Mr. Waldo: The first at the top of the page, that of the Texas & Pacific, from Big Spring to El Paso, the next below it the Houston & Texas Central from San Antonio to El Paso, the entire line in differential territory, and next below that the Fort Worth & Denver between Acme and Texline, constituting the entire mileage of that line within differential territory, just to the right of the Fort Worth & Denver differential line and below that line are those of the Houston & Texas Central, the Texas & Pacific, the Gulf, Colorado & Santa Fe, the Missouri, Kansas & Texas of Texas, the Fort Worth & Denver within Common point territory, the International & Great Northern, the Galveston, Harrisburg & San Antonio within common point territory and the Trinity & Brazos Valley. Except as to the Texas & Pacific west of Weatherford the profiles of the lines in common point territory run very much the same, the Trinity & Brazos Valley possibly being an exception, that being the lowest grade line in the state and built with that end chiefly in view, I understand.

Now, it would appear at first glance that as to the Galveston, Harrisburg & San Antonio, the difficult grades are largely westward, and, of course, as a general thing that is the case, but the grades
489 eastbound, where they are one per cent or greater, are so much longer than those in common point territory that they are almost as numerous as westbound, and while not as long are far longer on the average than in the common point territory.

Of course, there are some grades in common point territory as steep as some of the worst ones in differential territory, but they are with few exceptions very short and a train can get sufficient impetus coming down one to make its way pretty well to the top of the next. That is not as ideal operation, by any means, as a low grade line, such as the Trinity & Brazos Valley, but it is vastly better than the long drags up the grades in either direction on the differential territory lines. Furthermore, even conceding for the sake of argument

that the grades were largely westbound on the Galveston, Harrisburg & San Antonio west of San Antonio, the power must be brought back that carried that tonnage up the westbound grades and with distribution of the tonnage on the relation of two eastbound to one westbound there would be no advantage whatever in the lower eastbound grades. As a matter of fact, the tonnage is almost evenly distributed east and westbound on that line.

In connection with this exhibit in order to illustrate it more clearly, must be considered Exhibit Number 12 showing the average potential engine rating of the same class of engine on the Southern Pacific lines in differential and in common point territory.

(The statement in question, consisting of one sheet, so offered and identified was received in evidence and thereupon marked Defendants' Exhibit Number 12, Witness Waldo, received in evidence May 17th, 1917, and is attached hereto.)

Mr. Waldo: Exhibit Number 12 shows the average potential rating of what is known as the 800 class of locomotive used on the Southern Pacific Lines both on the Galveston, Harrisburg & San Antonio west of San Antonio and east of San Antonio, that is, the main line east of San Antonio, and on the Texas & New Orleans between
490 Houston and the Sabine River, on the Galveston, Harrisburg & San Antonio south of Houston to Galveston, and on the Houston & Texas Central from Houston to Denison.

It was impossible to make any intelligent comparison with other lines because we were unable to arrive at just how their locomotives which are entirely different types, compare with this 800 class of Southern Pacific locomotives, but in considering the two exhibits together, noticing the similarity in general of the profiles of the various lines, it is a perfectly reasonable assumption that this same class of locomotive would perform in practically the same way over these various lines.

Taking the averages for the several districts in common point territory we have an average potential rating east of southbound of 2,168 tons, west or northbound 2,175 tons.

On the Galveston, Harrisburg & San Antonio in differential territory 1,158 tons east or southbound and 1,242 tons west or northbound.

That again indicates that on the average the grades are about the same so far as the engine efficiency is concerned, both east and westbound on the Galveston, Harrisburg & Santa Fe in differential territory, the average potential rating being almost the same in both directions; also that the rating in common point territory is almost double that in differential territory.

In addition to that there is the question of water in differential territory. Not only is the water source but what is there is in a large measure of a quality that cannot be used in locomotives and it has to be hauled great distances and distributed to the various tank or watering stations. It has become necessary to recently for the Galveston, Harrisburg & San Antonio to construct a reservoir, I believe at Sanderson or in that visinity, to which they have had to haul

water as far as 125 miles to supply that reservoir and pump into the tanks for supplying the locomotives. That condition on the Texas & Pacific, I understand, is more aggravated than on the Galveston, Harrisburg & San Antonio. I know that the Galveston,
491 Harrisburg & San Antonio has had to sell them water from the nearest supply station of Sierra Blanca at various times, and I will not undertake to testify directly to that. Mr. Payne will do so in detail. But they have had to go so far as to handle water in exclusive water trains. The Galveston, Harrisburg & San Antonio has not been so unfortunate as that thus far, but does have to carry water in a great number of its regular schedule trains, freight trains, to distribute to those various supply stations.

Mr. Barry mentioned in his testimony that the wages we have to pay in that western country are higher, station wages, particularly, than in common point territory. That, of course, is comparatively a small item, but is an index to the more expensive conditions there.

Exhibit Number 13.

Mr. Cowan: Mr. Waldo, before you pass from this engine rating, 800, you have 3500, 1250 and so on 1150, down that column, is that tons or M's?

Mr. Waldo: These are all reduced to tons.

Mr. Cowan: Did Mr. Barry prepare the engine ratings which I requested when he was on the stand at Dallas and give the ratings on the different divisions of the principal engines used? He said he would.

Mr. Waldo: What was that?

Mr. Cowan: Did he prepare a list of the engine numbers and ratings between Sanderson and Fort Worth as I requested?

Mr. Waldo: I have not heard from Mr. Barry since he left, Judge. I presume he has done so or is doing so.

Mr. Cowan: I only make the inquiry because I have got to leave tomorrow and might forget it if I did not ask.

Mr. Waldo: I will telegraph him and remind him of it and get it if he has not done it.

These were taken from the same source, however, that he would have to get his.

Mr. Cowan: This just takes the 800 class.

492 Mr. Waldo: This just takes the 800 class because that is the only class of engine that is operated both in common point and differential territory. There is an engine operated in differential territory that has a higher rating than these—not a great deal higher—Mallet type. It does have a higher rating, but has never yet been operated in common point territory.

Mr. Cowan: Then, you have a 400 type on the Houston & Texas Central?

Mr. Waldo: Yes, sir.

Mr. Cowan: I just inquired lest I might overlook it.

Mr. Waldo: Yes; this was used for this illustration purely because it was used both in common and differential territory and they could

get exactly the comparative rating, the purpose being to show the performance of the same locomotive in both territories.

Exhibit Number 13 is a comparative showing of the total tonnage both state and interstate originated and terminated on the Southern Pacific lines in differential and in common point territory. These figures, by the way, indicate tons, not pounds.

(The statement in question, consisting of one sheet, so offered and identified was received in evidenceand thereupon marked Defendants' Exhibit Number 13, Witness Waldo, received in evidence May 18th, 1917, and the same is attached hereto.)

Mr. Garwood: During what months?

Mr. Waldo: This shows the figures for the months of January, March, May, July, September and November, 1915. I took that period because the last year was not indicative of normal conditions by any means in differential territory on the Galveston, Harrisburg & San Antonio. As is well known, of course, the troops have been distributed along that entire line and the supplies to them, the movement of their own equipment to and from that territory,
498 the traffic incidental to their being there, was far in excess of any previous period or any normal period. That would be indicated by somewhat similar data that would be furnished by the Texas & Pacific showing the conditions along their line for the last year, or representative months of the last year, *their* being no troops along that line.

Mr. Cowan: You do not mean they did not handle any troops to El Paso?

Mr. Waldo: No; I say they were not stationed along that line.

Mr. Cowan: I was afraid it might be misleading.

Mr. Waldo: No, indeed. I am sorry they handled as many as they did.

This shows per mile of road during the period mentioned total of all freight, carload and less, 2,040.7 tons originated and terminated in common point territory as compared to 396 tons in differential territory. That 396 includes the live stock. Excluding the live stock which takes no differential, straight mileage rate, there were 342.6 tons. Now, of course, a great part of that moved directly to or from El Paso or Eagle Pass, because of those being large bases for the troops and their supplies as well as for such tonnage as has moved into and out of Mexico during that time, and despite the general belief that that movement has discontinued entirely, there is a comparatively small but nevertheless considerable movement. That has all moved on local billing to and from El Paso because there have been no through billing arrangements with any of the Mexican lines for the last several years. Excluding that traffic there are only 200 tons originated and terminated at all other stations on the Galveston, Harrisburg & San Antonio from San Antonio to El Paso, 620 miles—619 to be exact.

The right hand side of the exhibit merely separates the carload and less than carload which shows the same distribution.

On the lower half of the exhibit is the comparison of population

per square mile and per mile of railroad in all the Texas common point territory as compared to that in Texas interstate differential territory, that is, differential territory that is fixed in the de-
494 scription in Tariff 2-B.

The former figures that we have introduced for this purpose and those introduced in the Colorado case I referred to a few minutes ago were those from the Government census of 1910, but in order that there can be no question about the estimated increase—because it cannot be other than an estimate of the increase since 1910—we secured from the Census Bureau at Washington their figures revised to July 1st, 1916, and the lower half of this exhibit is computed from the figures furnished by the Census Bureau showing a population per square mile in common point territory of 30.26 as compared to 41.13 in differential territory; a population per mile of road of 319.3 as compared to 153 in differential territory.

Mr. Nickels: Mr. Waldo, one question before you pass from this exhibit. Where did you count San Antonio as to tonnage and population?

Mr. Waldo: San Antonio was counted in common point territory.

Mr. Nickels: Both as to tonnage and population?

Mr. Waldo: I will now offer exhibit Number 14.

(The statement in question, consisting of nine sheets, so offered and identified was recieved in exidence and thereupon marked Defendants' Exhibit Number 14, Witness Waldo, received in evidence May 17th, 1917, and is attached hereto.)

Mr. Waldo: This exhibit is prepared somewhat in the same manner as those showing the comparison of the various scales of rates, Texas Commission, 2-B, and those composed in common point territory, for the purpose of illustrating what increases in rates and consequently in freight charges have resulted from the application of the first, second, third and fourth class rates in tariff 2-B, the Texas traffic moving between common point territory and differential territory and between points in differential territory.

The first sheet is a recapitulation of the detail figures set forth in the remaining sheets 2 to 9 inclusive.

495 The exhibit has not been made to include the carload class rates because they are *now* used nearly so extensively as the less than carload classes in differential territory particularly, commodity rates being provided for most of the carload traffic that moves to and from that territory. Therefore, in order not to make the exhibit too cumbersome we have included only the first four classes.

On the detail sheets 2 and 9 inclusive are the rates for each unit of distance as fixed in the mileage scale of class rates in tariff 2-B from 10 to 400 miles, beyond 400 miles we have added the units of distance fixed in the differential scale on page 87 of the same tariff.

Now those distances are shown under the caption, "Total mileage," in the column at the left-hand side of each sheet.

Across the top of the sheet is shown each unit of distance from 10 to 700 miles the rate applicable to traffic moving each unit of dis-

tances; from 10 to 300 miles in differential territory, the maximum differential being reached at 300 miles.

Now it has been contended here and heretofore—possibly I had better go on and finish first as to what increase this shows. It is all footed up at the lower right-hand corner of the recapitulation, the average increase for all of the first 4 classes being 17.3 per cent over the Texas Commission rates applied for like distances, that is applying the 2-3 method of assessing the differential for all distances traversed in differential territory regardless of the entire distance traversed.

In the column B, under the heading of "Total," in the lower right-hand corner is shown what the result would be if we applied the differential only to distances in differential territory in excess of 400 miles, at which distance the maximum common point rate is reached. That would give 116 per cent, or 10 per cent increase over what would have accrued from the application of the Texas Commission rates.

496 Now it has been contended here, of course, and in other hearings and in argument that the differentials would not be added until the maximum distance is reached, as was done in the operation of the Texas Commission scale.

Mr. Pawkett pointed out that that was the system practiced by the carriers before the organization of the Railroad Commission of Texas and that had been their custom for several years prior to the Commission's first days. I would not attempt to say just how many years. I do know, however, that at one time the carriers undertook to apply an entirely separate scale of rates between differential and common point territory; that is, one scale between differential and common point territory and another scale between points in common point territory, and found it was entirely unsatisfactory and it was discarded and the method that the Texas Commission found in effect was adopted.

It is not surprising that at that time all carriers should have adopted such a method, because they probably gave no thought to such a condition as has confronted us in this case.

It is unnecessary to go back again into the history of the establishment of rates in the beginning of railroading in this state. It was done rather extensively in Houston. And I will merely repeat what was done there, that rates were originally made with the idea of all of the traffic—not all, but a great preponderance of it would flow through Houston and later Galveston into and out of Texas, the great staple production of the state, cotton and cotton seed products and some wool, going out through the ports and the manufactured articles, food stuffs and supplies coming in in the opposite direction.

The maximum common point rate was then reached at about 175 miles—it differed slightly on different lines, but averaged around 175 miles, and that distance was passed in every case long before they reached the differential line. Therefore, as to by far the greater volume of the traffic there was no thought necessarily given to the question whether or not the differential should be added

497 before the maximum rate was reached. As Mr. West undertook to develop on cross-questioning several witnesses, the carriers have at various times endeavored to have that method discarded and the method followed in 2-B adopted, of adding differentials for all distances in differential territory regardless of the total distance traversed.

My Exhibits 8 and 9 give a very comprehensive illustration of how the business into differential territory is distributed as to distance, and it will be seen from that what a small part of it would get the benefit of any differential at all if we added it only after 400 miles was passed. While there is a considerable volume of traffic, considering it alone, moving beyond 400 miles into differential territory, as compared to the total volume it is small and a greater part traversing this territory where exactly the same difficulties prevail, regardless of whether it travels 50 or 600 miles, would bring no compensation to offset those difficulties as to much the greater portion of the traffic.

No reasonable man can argue for a moment that if it is proper to add a differential by reason of the conditions that are admitted to have prompted the use of the differential, they should not apply for all distances. What possible reason can there be in starting a shipment 50 miles east of San Antonio and carrying it 350 miles west, or 50 miles east of Big Spring and carrying it 350 miles west through this sparsely settled, unproductive territory with the difficulties of operation that have been pointed out, and yet charge no more for that because it has not gone 400 miles or 245 miles? What does either 245 or 400 miles mean that it should prevent the carrier from getting the revenue that the conditions in that territory warrant?

498 Testimony of Mr. Gentry Waldo (Continued), pps. 5817-5820.

Mr. Hershey: Mr. Waldo, as to the application of the differential on brick, building material, etcetera, do you think that if the theory of the addition of a differential is the proper one, that differential should be added on building material just as on other items of traffic?

Mr. Waldo: Since the brick rates are made percentages of class rates, it is not clear to me how it is practicable to eliminate the differential on brick rates without eliminating it on the rates on which they are based.

Examiner Thurtell: Of course, it is not, Mr. Waldo, but it is perfectly possible to draft a scale of brick rates. Now, is it your idea, in considering that everything taken into consideration, the differentials should apply on the brick rates, irrespective of what the Commission's order authorized, and irrespective, too, I will say, of any logical—I understand the way you have applied the differential is logical in your opinion, but your method was illogical. But, any method you take, it seems to me, is illogical, and after all we are not going to do the logical thing; we are going to do

the thing that seems best to do. Taking everything into consideration, do you think the differential should apply on brick?

Mr. Waldo: Well, I am really glad to have an opportunity to express a frank opinion on that, Mr. Examiner, because it is a matter that was discussed quite fully in the Texas Tariff Bureau interpreting the Commission's order and opinion in this case, and there was a great deal of debate as to—in the first place the authority for adding the differential; in the second place the propriety of it, and effect of not doing so after it was finally concluded that we properly could.

Personally, I do not think there should be any differential added to the brick rates for application in differential territory, but if we eliminate those, how are we going to get away from the man who is shipping on the class rates, coming from differential territory? How are you going to meet Mr. Stinnett's objections
499 as to his Panhandle situation if we appear to favor brick and not some other commodity, or not less than carload merchandise? It is just the same question we are confronted with when we loosen up a little and make some concession for some man, as we do for this, that and the other brick shipper. The Houston & Texas Central have been represented here as the worst offender, have been accused of leveling every other rate that they published in making those concessions.

Now, why cannot that same situation occur in differential territory if we eliminate the differential on brick? It would be very difficult to give any technically sound excuse for eliminating the differential on brick and retaining it on other commodities, and on class traffic, although, as I say, I think it would be entirely proper to eliminate it.

Mr. Hershey: Now, Mr. Waldo, what excuse is there for applying the Commission scale on brick within the differential territory and charging a differential on all other traffic, when the use of the differential is on account of the sparsely settled portions of the country, the light traffic originating and terminating therein?

Mr. Waldo: The reason for that, Mr. Hershey—by the way, in answering that, I would have it apply to crushed rock and gravel as well as to brick—we have, as has been shown in the testimony, industries who would ship very largely into differential territory on the old basis of continuous mileage in differential as well as common point territory without any higher basis in differential territory, the rock company at Knappa, and the gentleman who testified this morning representing the brick plant at D'Hanis. Those are plants, that, with this encouragement, I think, would develop a very considerable traffic out there, and we feel that we *would* afford to offer them that encouragement if we were not confronted with these same conditions that we have been confronted with every time we have made a reduction in rate for anybody for the same purposes, as I have just explained to the Examiner.

500 Testimony of Mr. J. B. Payne, pps. 4539-4556.

Mr. Waldo: Mr. Payne, you are assistant freight traffic manager of the Texas & Pacific Railway?

Mr. Payne: Yes, sir.

Mr. Waldo: How long have you occupied that position?

Mr. Payne: About 15 days; a little over 15 days.

Mr. Waldo: What has been your traffic experience prior to that?

Mr. Payne: I was general freight agent for a year, assistant general freight agent for three years and commercial agent for 12 years, rate clerk a couple of years, stenographer, and I believe that is all.

Mr. Waldo: Have you prepared exhibits to show the differences as to certain features in a general way of the cost of operation and cost of handling freight in Texas differential and Texas common point territory separately?

Mr. Payne: Well, in connection with the profile map that you filed of our line, setting forth the differences in the grade line as between common point territory and the differential territory.

I have prepared three exhibits to amplify in a way the features set forth in Mr. Waldo's exhibit.

Mr. Waldo: I mentioned during my testimony something about the difficulties in providing water for locomotives in differential territory and stated that I understood that you had something more in detail along that line. Have you an exhibit to illustrate anything of that kind?

Mr. Payne: I had our operating department furnish me with a statement of water hauled between Big Spring and El Paso for a period January 25, to February 24, 1917.

This I will introduce as my exhibit No. 1.

(The statement in question, consisting of one sheet, so offered and identified, was received in evidence and thereupon marked
501 Defendants' Exhibit No. 1, Witness Payne, received in evidence May 19, 1917, and is attached hereto.)

Mr. Payne: This exhibit shows, first, the total number of freight trains Big Spring to Toyah and the total number Toyah to El Paso.

Mr. Waldo: That is the total number of freight trains operating between those stations?

Mr. Payne: Operated between those stations.

The number of exclusive water trains handled and the number of trains hauling one car of water.

The operating department furnished this data not in as complete a form as it should have been furnished and for lack of time we did not carry it out. They carried out the car miles amounting in all to 137,423. To complete the exhibit we might have obtained the ton miles from that figure and have applied one half cent per ton mile which is a figure recognized by the Commission in hand-

ling company material, and have gotten something like $17, plus. I did have the figures a moment ago.

Mr. Waldo: Did you not estimate so many tons of water per car?

Mr. Payne: That was based on an estimate of 25 tons to the car, this being furnished me by Mr. Cordeal of our operating department.

Mr. Byars: Before you leave that, Mr. Payne, I do not want to interrupt you, but your third item there, does that mean the number of trains hauling one water car? Does that mean that was all that was in the train, just a car of water?

Mr. Payne: No; that was a freight train.

Mr. Byars: Included with other freight?

Mr. Payne: Yes, sir.

Mr. Waldo: Then in order to arrive at an estimate of the
502 expense you multiply the number of car mileage shown 137,
423 by 25 to get your estimated net ton miles of water handled?

Mr. Payne: Yes; and that result I multiplied by five mills.

Mr. Waldo: Arriving at something over $17,000 for the one month shown for handling water?

Mr. Payne: Yes.

Mr. Waldo: Now about what distances was that water handled?

Mr. Payne: Most of the water was handled between Monahans and Toyah, 54 miles, and between Monahans and Big Spring, 96 miles and between Van Horn and Toyah 70 miles.

Mr. Waldo: That handled in the exclusive water trains was distributed over those distances?

Mr. Payne: Well, not all; a considerable number of trains were brought intact from the point of origin to storage wells at Toyah; some of the trains were distributing trains, dropping a car along the line.

Mr. Waldo: And you stated in a general way it was distributed over this distance in such a manner as to make necessary a car mileage of 137,423?

Mr. Payne: Yes.

Mr. Waldo: Is that a representative period, the months shown on that exhibit?

Mr. Payne: Well, I would not undertake to say. That is not exactly the time of the year that we have our drouths as a rule.

Mr. Waldo: Drouths in that territory are not peculiar to any particular period, are they?

Mr. Payne: That is true.

Examiner Thurtell: Have you always been running water trains out there?

Mr. Payne: Yes, sir; we have, Mr. Examiner. I do not recall when we have been without. Of course, at times we do not run them; we have water at some periods, not always certain periods of a year, but periods of four or five years we will have a supply of water.

Examiner Thurtell: What supply is that, springs?

503 Mr. Payne: Yes; and these rivers will run sometimes within a day bank full. I suppose it comes from the hills and the mountains, and then it will be dry for a long period of time.

Mr. Thurtell: Well, such wells as you bore in that country——

Mr. Payne: Well, they do not turn out well. I think as a rule it is gyp water, and it does not work so well with an engine.

Examiner Thurtell: Gyp water—what is that?

Mr. Payne: Gypsum water.

Mr. Hershey: It is about the same distance there across the country or down to the water, is it not?

Mr. Payne: Yes; just about.

Mr. Waldo: Do you have any such difficulties as that in common point territory?

Mr. Payne: I do not believe we do; I do not recall any.

Mr. Waldo: Have you any figures showing the comparative population per mile of road and per square mile along these sections of your lines serving differential and common point territory respectively?

Mr. Payne: Yes, sir; Exhibit No. 2 is a statement showing total population, area in square miles and railroad mileage in each county, also population per square mile per mile of railroad for the year 1910, the 13th census, and for 1916, based on estimates of the Census Bureau of July 1, 1916, covering counties traversed by the Texas & Pacific Railway, Texarkana to El Paso *vio* Marshall, also via Sherman.

(The statement in question, consisting of one sheet, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit No. 2, Witness Payne, received in evidence May 19th, 1917, and is attached hereto.)

The differential line with us begins in Mitchell County.

The population per square mile in 1910 was 10.1; per railroad mile 271; in 1916, 14.5; per railroad mile 390.

504 From Mitchell there is a decrease with the exception of Midland and Ward all the way down to El Paso with the exception of El Paso which shows 5.6 per square mile in 1910 and 10.5 per square mile in 1916, 237 per mile of railroad in 1910 as against 315 in 1916.

Mr. Waldo: The greater part of that being the City of El Paso?

Mr. Payne: The greater part of that being the City of El Paso.

Mr. Waldo: The extreme western end of the county of your line?

Mr. Payne: Yes, sir.

Now in one county there, Crane County, it will be noticed the average population per railroad mile is 305. We only have 1.40 miles in that county which accounts for that.

Mr. Waldo: Of course there are a great many outlying counties the traffic of which is tributary to your line and that is indicated in a more comprehensive way in the exhibits that I submitted?

Mr. Payne: Yes, sir.

Mr. Pawkett: Mr. Payne, before you leave that I do not want to interrupt, but might I ask you a question?

Mr. Payne: It is all right, Mr. Pawkett.

Mr. Pawkett: I will call your attention to the figures of Midland County there. You show population in 1910 139, the total population 3,464; for 1916 on a population of 4,546 you show a population per mile of road of 125. You have got 25 per cent increase in population, or a little over, and a decrease in the population per mile.

Mr. Payne: In 1910 the total population is 3,464 with a population per mile of railroad of 129.

Mr. Pawkett: Yes, sir.

Mr. Payne: In 1916, 4,546 and an average population per railroad mile of 125.

Mr. Pawkett: Yes; that is what I was asking for.

505 Mr. Payne: I do not know what would make that difference unless——

Mr. Pawkett: You do not show any change in the railroad mileage.

Mr. Payne: Unless it would be a change in the railroad mileage.

Mr. Waldo: Or perhaps a change in a county line that would affect the mileage, or there is a possibility of an error in the calculation.

Mr. Nickels: I would like to ask one question before you pass from that question.

Mr. Payne: Yes, sir.

Mr. Nickels: Does the railroad mileage shown for Bowie County, for instance, represent the total railroad mileage in that county?

Mr. Payne: I understand it represents the total mileage.

Mr. Nickels: All the way down?

Mr. Payne: Yes.

Examiner Thurtell: We will take a recess here until 2:00 o'clock.

Whereupon at 12:30 o'clock P. M. a recess was taken until 2:00 o'clock P. M., May 19, 1917.

After Recess.

2:00 o'clock P. M.

Examiner Thurtell: All right, Mr. Payne; you may go on with your statement.

J. B. PAYNE resumed the stand.

Direct examination (continued):

Mr. Payne: Exhibit Number 3 is a statement showing the number of cars and tons of less than carload freight received and forwarded to and from the Eastern division Texarkana to Fort Worth inclusive, and the Rio Grande division Tramble to El Paso inclusive; also showing the average number of tons and tons per mile on each division.

506 This data was taken from Form Number 488, which is a monthly report made by agents to the General Freight Agent.

(The statement in question, consisting of 2 sheets, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit Number 3, Witness J. B. Payne, received in evidence May 19th, 1917, and is attached hereto.)

Mr. J. B. Payne: This exhibit covers the months of October and November, 1916, and February and March, 1917.

On the first line, the Eastern division from Texarkana to Fort Worth, a distance of 246 miles, shows the total number of tons received and forwarded for the month of October, 20,123, or 81.8 per mile.

On the second line, Rio Grande covers that part of the line between Fort Worth and El Paso, including El Paso.

The third line between Fort Worth and Big Spring, which is the end of common point territory, and includes Big Spring.

The fourth line is from the first station west of Big Spring to El Paso, including El Paso. That is our differential territory.

The fourth line is from the first station west of Big Spring to but not including El Paso.

The less than carload tons are shown in the same manner.

In October, 1916, on the Eastern division there were received and forwarded 81.8 cars per mile; on the Rio Grande division up to and including Big Springs 26.03 per mile, and in differential territory 8.93 per mile.

I do not think it is necessary to read all of these, as the exhibits speaks for itself.

Mr. Waldo: It tends to show, then, as to October, 1916, that while you had 8.93 cars per mile on the average originating in differential territory, as a matter of fact, more than half of that originated at or was delivered at El Paso, the extreme western end?

Mr. J. B. Payne: Yes; more than half.

Mr. Waldo: And that forwarded from and received at in-
507 termediate points there were only about 3.5 cars on an average, 3.58?

Mr. J. B. Payne: Yes.

Mr. Waldo: That same relationship carries generally through the exhibit?

Mr. J. B. Payne: Throughout the exhibit. I excluded El Paso on the first line for the reason that a large part of our traffic to and from El Paso for the months shown was caused by a large troop movement, being on the border, and was rather abnormal.

Examiner Thurtell: Mr. Payne, it is not to be inferred from this, is it, that if you would examine the number of cars per mile on the eastern division, total average number of cars per mile, 81.8 cars, then the total number of average tons per mile, 108.73, that the number of tons in each car would be the quotient of the 108 divided by 81?

Mr. J. B. Payne: No; the 108.73 represents the less than carload

tons only, separate entirely from the carloads. The reports cover carloads and less than carloads separately.

Mr. Waldo: That is shown, is it not, in the headings under each month? Your less than carload is shown separately from the carload?

Mr. J. B. Payne: Yes.

Mr. Waldo: But you do not show the tonnage of the cars?

Mr. J. B. Payne: Do not show the tonnage of the cars.

Examiner Thurtell: I see; there is not anything on this exhibit that would lead to any calculation as to the average number of tons in the cars?

Mr. J. B. Payne: No.

Examiner Thurtell: It could not be possible it would be anything like that?

Mr. J. B. Payne: No.

Mr. Atkins: It only goes to show the density of traffic, as I understand.

Mr. J. B. Payne: That is the idea, yes.

508 Mr. Waldo: Have you made any comparison or estimated comparison of these figures with those that were shown in my Exhibit Number 13 for the differential territory on the Galveston, Harrisburg & San Antonio?

Mr. J. B. Payne: Yes; I did. Your figures show for those months 36.4 tons per mile.

Mr. Waldo: In differential territory?

Mr. Waldo: Carload or less than carload?

Mr. J. B. Payne: Less than carload, while these figures show 39.2 tons per mile for 4 months. Your carloads for 6 months were 22 per mile, while ours for 4 months are 29 per mile.

Mr. Waldo: How did you arrive at that 22 for the Galveston, Harrisburg & San Antonio?

Mr. J. B. Payne: I think the Galveston, Harrisburg & San Antonio figures were in tons. We used 15 tons to arrive at the number of cars.

Mr. Waldo: That is, you estimated 15 tons to the car.

Now, that difference, or heavier tonnage on our line than on the Galveston, Harrisburg & San Antonio can be practically explained by the fact that the Galveston, Harrisburg & San Antonio figures were for 1915 while these are for the latter part of 1916 and January and February, 1917.

Mr. Waldo: In the first place, then, your figures are representative of a year that was generally more productive of tonnage for the railroads, and in the second place, you have used the figure of 15 tons in estimating the number of cars on the Galveston, Harrisburg & San Antonio, where as a part, at least, of that was live stock, which would not be in excess of 11 tons, and your 15 tons as to the other would be a rather liberal estimate?

Mr. J. B. Payne: Yes, sir; 15 tons is rather an outside figure.

Mr. Waldo: Do you think, then, that on the whole your ex-
509 hibit reflects much the same condition in differential terri-

tory on the Texas & Pacific as that on the Galveston, Harrisburg & San Antonio?

Mr. Payne: I believe it does.

Examiner Thurtell: Well, would this be true, Mr. Payne: that looking at the month of October, the last column on the Eastern division, where you show the total average number of tons per mile 108, and on the Rio Grande division 20, that the relation between those two indicates the relation between the density of traffic in less than carload business on those two divisions?

Mr. J. B. Payne: Yes.

Examiner Thurtell: That is to say, it was about five times as dense during that month on the Eastern division as on the Rio Grande division?

Mr. J. B. Payne: As on the Rio Grande.

Examiner Thurtell: And for the next month about three times as great instead of five times?

Mr. J. B. Payne: Yes; about three times.

Examiner Thurtell: As 20 is to 63.

Mr. J. B. Payne: As 20 is to 63.

Mr. Hershey: Now, Mr. Payne, your Exhibit Number 1 contains some data with respect to the movement of water to take care of your locomotive requirements. Is the situation on the Texas & Pacific any different from what it is on many of the west Texas lines?

Mr. J. B. Payne: Well, I believe the Galveston, Harrisburg & San Antonio haul water, but I do not know the extent to which other lines do; it is generally understood that it is necessary for all lines in that territory.

Mr. Hershey: All lines have to perform some service to take care of their own water requirements?

Mr. J. B. Payne: Yes.

Mr. Hershey: Now, in addition to taking care of the re-
510 quirements for water for locomotives, I notice that the Texas & Pacific and practically all other lines have a rate on water for commercial purposes, usually a very low rate per car for a considerable distance. Does your line handle any water for domestic purposes at various points on your line?

Mr. J. B. Payne: Yes; we do at times. We have a tariff covering water which expired not so very long ago, and we were called upon to renew it very quickly.

Mr. Hershey: You do handle water at various times on various parts of your line for domestic purposes?

Mr. J. B. Payne: Yes, sir.

Mr. Hershey: Perhaps if you did not supply the people along your line with water to drink, the density of population per mile of road, as shown in your Exhibit Number 2, would not be as great as it is now?

Mr. J. B. Payne: Well, I expect that is true.

Mr. Hershey: It helped it somewhat?

Mr. J. B. Payne: Helped it somewhat.

That is all the exhibits I have, Mr. Examiner.

Examiner Thurtell: Any further statement you want to make?

Mr. J. B. Payne: I believe not.

Mr. Waldo: I believe that is all, unless Judge Terry has something to ask.

Mr. Terry: I believe not.

(Here follows table marked page 511.)

511 *Comparative Statement of All Freight (State and Interstate) Originated*
Texas Differential Territory During O

	Total miles of railroad in Texas.	Miles of railroad in Texas common-point territory.	Miles of railroad in Texas differential territory.	Total tons handled all L. C. L. freight.	Less Tota L. fre han in T comm ter
	1,032	684	348	59,895	50,
		66.3% of Total Mileage	33.7% of Total Mileage		84. Total Ton Han
Tons Handled per Mile of Road— L. C. L.				58.04	7
Number of Carloads Handled Per Mile of Road					

Houston, Texas, September 12th, 1917.

tive Statement of All Freight (State and Interstate) Originated and Terminated on the Texas & Pacific Railroad in Texas Common-point Territory and Texas Differential Territory During October and November, 1916—February and March, 1917.

Total miles of railroad in Texas.	Miles of railroad in Texas common-point territory.	Miles of railroad in Texas differential territory.	Less than carload freight. Total tons handled all L. C. L. freight.	Total tons L. C. L. freight handled in Texas common-point territory.	Total tons L. C. L. freight handled in differential territory.	Total tons L. C. L. freight handled in differential territory exclusive of El Paso, Texas.	Carload freight. Total carloads handled.	Total C/L's handled Texas common-point territory.	Total C/L's handled in Texas differential territory.	Total C/L's handled in differential territory exclusive of El Paso, Tx.
1,032	684	348	59,895	50,721	9,174	5,513	49,393 Cars	42,159 Cars	7,234 Cars	5,061 Cars
	66.3% of Total Mileage	33.7% of Total Mileage		84.7% of Total L.C.L. Tonnage Handled	15.3% of Total L.C.L. Tonnage Handled	9.2% of Total L.C.L. Tonnage Handled		85.4% of Total Carloads Handled	14.6% of Total Carloads Handled	10.2% of Total Carloads Handled
per l—			58.04	74.1	26.3	15.8				
ads file							47.86	61.6	20.8	14.5

Texas, September 12th, 1917.

512 Testimony of L. M. Hogsett, pps. 4598-4627.

L. M. HOGSETT was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. Garwood: Mr. Hogsett, you are connected with the International & Great Northern Railroad?

Mr. Hogsett: Yes; I am general freight agent.

Mr. Garwood: How long have you occupied that position?

Mr. Hogsett: About two years. Prior thereto I was assistant general freight agent for about 3 years. Previous to that time I was with the Trinity & Brazos Valley in the traffic department, and prior to that with the Rock Island.

Mr. Garwood: The International & Great Northern is now in the hands of a receiver?

Mr. Hogsett: Yes, sir.

Mr. Garwood: Just state briefly what portion of the state the International & Great Northern covers.

Mr. Hogsett: The International & Great Northern is spread across the central part of the state of Texas in the shape of a letter X. It starts in the northeast portion of the state at Longview, Texas, and extends in a southwesternly direction through Palestine, Hearne, Taylor, San Antonio and on to Laredo.

It has another line from Fort Worth running south to Waco, and Bryan, Navasota, and Houston to Galveston.

There is another line running north from Galveston to Spring, Texas, at which point it connects with the Fort Worth branch. From Spring it goes north to Palestine, Texas, where it connects with the Longview-Laredo line.

On the Fort Worth line, there is the Madisonville branch extending from Navasota to Madisonville.

The International & Great Northern is so located that it serves both the light and heavily populated portion of the eastern and central part of Texas, and is all in common point territory except Devine and south.

513 Mr. Garwood: What is the total mileage of the road, approximately?

Mr. Hogsett: The total mileage of the road is approximately 1150 miles. The road owns actually about 1100 miles, and operates joint track for about 53 miles south of Houston to Galveston.

Mr. Garwood: From Devine south it is in interstate differential territory?

Mr. Hogsett: Yes, sir.

Mr. Garwood: How far is Devine from San Antonio?

Mr. Hogsett: Devine from San Antonio is 33.6 miles.

Mr. Garwood: You state that that territory is in interstate differential territory. Is it in state common point territory?

Mr. Hogsett: The status of the differential territory is this:

The common point boundary line on interstate traffic in 1885 extended as far south as Austin.

In 1887 it was extended to San Antonio.

In 1889 to Devine.

Effective May 9, 1905, under their Railroad Circular 246, the Texas Commission extended the common point territory to include Laredo.

The differential territory prior to November 1 on intrastate traffic was Devine and south.

On interstate traffic it has been continuously since the dates named in differential territory Devine and South.

Mr. Garwood: Have you any statement to make or exhibits to submit relative to this differential situation on your line?

Mr. Hogsett: The question of the application of differential rates was before the Interstate Commerce Commission in Docket 3084, Board of Trade of Laredo vs. International & Great Northern, 513½ et al., 22 I. C. C., pages 228 to 233.

In this differential territory the principal traffic is vegetables, live stock, coal and brick, forwarded traffic. In inbound tonnage consists chiefly of commodities used by an agricultural country. The forwarded vegetable business is almost exclusively onions, grown in the so-called Laredo section, produced along the rails of the International & Great Northern, and also at points on connecting lines, such as the Rio Grande & El Paso, the Asherton & Gulf, San Antonio, Uvalde & Gulf, all of these lines lying within this nearby territory.

In the case referred to, 22 I. C. C., the Commission found that a comparison of tonnage and revenue in the territory from Devine to Laredo compared with the adjacent territory from Devine to Taylor, on both interstate and intrastate traffic, for the years 1901 to 1910 inclusive, produced, Taylor to Devine, 81 per cent of the tonnage; Devine to Laredo 19 per cent of the tonnage.

In the territory Taylor to Devine the revenue was 82 per cent; Devine to Laredo 18 per cent.

In making this comparison, I took what is called one operating division of the International & Great Northern. It is divided at San Antonio, however, into a subdivision, which they call the Laredo subdivision. This comparison had the effect of taking a comparatively smaller distance in differential territory than that in the common point territory.

In the territory San Antonio to Taylor, however, the International & Great Northern does not, by any means, handle all of the traffic. This is a very highly competitive territory, within which there are located a number of important towns.

To illustrate, at Taylor there is competition with the Missouri, Kansas & Texas; at Roundrock and McNeil with the Houston & Texas Central; at Austin with the Missouri, Kansas & Texas and the Houston & Texas Central; at San Marcos and New Braunfels there is competition with the Missouri, Kansas & Texas.

As a matter of fact, the entire line of the International &

514 Great Northern from San Marcos to San Antonio is highly competitive, the Missouri, Kansas & Texas and International & Great Northern paralleling one another in that territory; very close together.

In the territory south of San Antonio there is little if any competition until we reach Laredo, at which point we come in competition with the Texas Mexican, which comes into Laredo from the east. It is true that in this territory we cross the San Antonio, Uvalde & Gulf at Gardendale, Texas, but that place is merely a wide place in the road, where two railroads cross. There is no settlement of any particular importance there, and practically no business. It just happens to be a place where the railroads meet one another.

There is a short-line connection running out from Artesia Wells to Asherton, called the Asherton & Gulf. It has no other connection than the International & Great Northern, so its traffic — not competitive with any other line.

Mr. Garwood: Are the San Antonio, Uvalde & Gulf and the Artesian Gulf——

Mr. Hogsett (interrupting): Asherton & Gulf.

Mr. Garwood: Are they still in the hands of receivers?

Mr. Hogsett: The San Antonio, Uvalde & Gulf and the Artesian Gulf and the Asherton & Gulf are all, I believe, in the hands of receivers. I am not certain at this moment about the Asherton & Gulf.

Mr. Garwood: You say that in round numbers the comparison of both tonnage and revenue on that part of this position between Taylor and San Antonio and between Devine and Laredo was in 1901—is that the date of that——

Mr. Hogsett: 1901 to 1910.

Mr. Garwood: Was 80 to 20 per cent?

Mr. Hogsett: Approximately 81 and 19 per cent.

Mr. Garwood: 81 to 19?

Mr. Hogsett 20.

515 Mr. Garwood: How about the revenue?

Mr. Hogsett: 82 to 18.

Mr. Garwood: Now, have you made that comparison for a recent period?

Mr. Hogsett: Yes, sir; I have prepared an exhibit which I will now file.

(The statement in question, consisting of 1 sheet, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit Number 1, Witness Hogsett, received in evidence May 19th, 1917, and is attached hereto.)

Mr. Hogsett: This is an exhibit of tonnage and revenue for a period of 6 years, in common point and differential territory from Frame to Laredo, 282.4 miles. That is, common point territory Frame to Devine, distance 141.7 miles, and differential territory from Devine to Laredo, distance of 120.7 miles.

In making this statement, I started out with the first station south of Taylor. In other words, the inbound revenue tonnage from the

north and the beginning of the San Antonio operating division is
cluded from the report.

In preparing this statement, I found that within the territory fr
Frame to Devine was the station of San Antonio. Within the l
year there has been a good deal of government freight handled to
from San Antonio, including incidental supplies of all charac
which could hardly be considered as representative of normal con
tions, or normal business for that particular point, and then, furth
San Antonio is one of our largest freight stations on the line, and
ing a highly competitive point it hardly reflected what might be ca
a comparative point with what would be found in the territory sou

In the territory from Wipffs to Laredo, Wipffs being the first
tion south of Devine into differential territory, the same situation
met with, in a measure, due to the fact that there is considera
government freight moving from and to Laredo that is
516 representative of normal conditions, and then again,
Mexican traffic, which in prior years was handled on throu
rates, through billing and through divisions, did not really repres
or mean anything as to the normal conditions of the territory s
as we desired to protect by differentials, so in compiling these figur
eliminated both San Antonio and Laredo.

On this basis the tonnage for the year 1911 in common point
ritory was 87 per cent, and in differential territory 13 per ce
revenue 79 per cent north, in common point territory, and 21
cent in differential territory.

The other conditions are shown in the exhibit, and it will be no
that the average for 6 years shows the tonnage in common point
ritory is 88 per cent and differential territory 12 per cent; reve
79 per cent in common point territory and 21 per cent in differen
territory, it being apparent from this exhibit, which compared w
the facts as set forth in the old Laredo differential case in I. C.
Docket 3084, that the traffic and revenue and other conditions in t
territory, on basis of which the differential was justified, have
changed in the least.

I may say further that in case I had included both San Anto
and Laredo in this comparison that the percentage of tonnage
revenue would have been very much less in the differential territ
That is why I have given it the most liberal treatment I could,
order to fairly show what the differential territory means to us.

Mr. Garwood: Considering the similarity of results as compa
with those presented in the case submitted to the Interstate Comm
Commission, it would seem that there is practically no difference
the amount or character of the traffic? That is, as to its revenue
ducing qualities, and the differences between them.

What, in general, is the nature of the country between Devine
Laredo?

Mr. Hogsett: The territory between Devine and Laredo
country in which there is some cultivation immedia
517 adjacent to the railroads, just in spots. There is a little f
here and there, up against the right of way of the In
national & Great Northern, but you get away from any of the

towns into the country, it is a brushy country, of cactus, and mesquite, adapted to grazing in spots, but it is merely a wilderness, as near as I can express what it really looks like. The water courses in the territory from Devine to Laredo are crossed by the International & Great Northern. In other words, the International & Great Northern does not follow the water courses, but crosses them, and when I speak of a water course, it is where cloud bursts or excessive rains, which are of short duration but of immense volumes, have washed out the country into ridges, and it has been said that if the country had water it could be made a regular garden spot, but there has not sufficient water been developed so far to make it progress very far, except possibly at and adjacent to Devine, where there is an irrigation project under way.

In order to give some further idea as to the territory, I will file my Exhibit Number 2.

(The statement in question, consisting of 1 sheet, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit Number 2, Witness Hogsett, received in evidence May 19th, 1917, and is attached hereto.)

Mr. Hogsett: This exhibit shows the estimated population at International & Great Northern agency stations south of Devine to Laredo, Laredo not included.

The first estimate, as of January 1, 1910, was shown in the record in the former Laredo differential case, and the estimate as of April 1, 1917, is the best estimate I could get at this time.

Mr. Garwood: You say that includes all of the agency stations between Devine and Laredo?

Mr. Hogsett: Yes, sir; Laredo not included.

I said something a moment ago about the floods. It is not an unusual thing for floods to come in this territory. I can recall,
518 not more than a couple of years ago, we had a flood down there that came up all of a sudden, and they chased the ties and rails out in the brush for a mile and a half.

Mr. Stedman: Where was that?

Mr. Hogsett: In the territory south of Devine. I do not remember the exact spot. I was told by the trainmaster of the San Antonio division who had been working on this flood, that for about 2 miles they could not even find a trace of the original roadbed of the International & Great Northern when this flood subsided.

To give a further idea of the situation in this differential territory, I wish to say that from San Antonio to Laredo there are 19,076 feet of bridges, or 3.61 miles. 18,380 feet consist of wooden trestles and pile trestle bridges, and there are 190 bridges in that distance. there are 9 iron and steel spans, with a length of 689 feet.

That indicates in a measure the character of the country and the troubles we find in operating down there with no traffic except seasonal traffic. When I speak of seasonal traffic, I mean that it is the vegetables, which last from April till probably June, and the live stock. We do haul a few cars of coal which come to us from mines

on the Rio Grande & El Paso. Little, if any of it, goes beyond San Antonio. Then there is considerable cordwood, mesquite, I believe, principally.

In this territory from San Antonio to Laredo there are 135.3 miles of 52-pound steel; 11.6 miles of 56-pound steel.

Outside of seasonal traffic, vegetables and live stock, for which special or extra trains are provided, we only run one passenger train, which is a mixed freight and passenger train, per day, that train moving at night. In addition to that we have a local one way each day.

Mr. Garwood: You mean local freight?

Mr. Hogsett: Local freight, serving the stations with way service.

The water in this territory is not adapted for engine use. It foams, and they have to use a great deal of compound. In fact, there
519 is one portion of the line ending about Greene, to and from which we have to haul water for the local crew which occasionally ties up there.

The character of ballast we have from San Antonio to Laredo is 29 miles of gravel, 12 miles of cinders and 109 miles of soil.

Mr. Garwood: What do you mean by soil? Do you mean it is not ballasted?

Mr. Hogsett: I mean the roadbed is shaped up and the track laid on top of it.

Mr. Garwood: That is, you have not any ballast?

Mr. Hogsett: No ballast.

Mr. Garwood: How many miles of that are there?

Mr. Hogsett: 109.

Mr. Garwood: That is nearly all of it, is it not?

Mr. Hogsett: Almost. That plus the bridges.

I did not expect to have to go on the stand this afternoon, and have some further facts which are to be furnished me Monday, bearing on this territory. In particular I expect to have an outline of the road.

In one of Mr. Waldo's exhibits, he covered a portion of the International & Great Northern San Antonio and north. I am trying at this time to get a profile of the line from San Antonio to Laredo. I understand it is little, if any, different from the profile of the International & Great Northern from San Antonio to Taylor.

Mr. Garwood: You have been over the Galveston, Harrisburg & San Antonio from San Antonio to El Paso, have you not, Mr. Hogsett?

Mr. Hogsett: Yes, sir.

Mr. Garwood: Well, notwithstanding the light traffic and conditions between San Antonio and Laredo, I will ask you if, taken as a whole, it is not better than it is on the Galveston, Harrisburg & San Antonio, say, from Del Rio to El Paso?

Mr. Hogsett: Well, you could hardly compare nothing
520 with nothing, Judge. They are both of them so bad I don't know how you can compare them.

Mr. Garwood: What effect would it have on the rate situation if the differential territory was maintained, say, on the Galveston, Har-

risburg & San Antonio, the Orient and the Texas & Pacific, and abolished on the International & Great Northern at Laredo?

Mr. Hogsett: I was just coming to that, Judge.

Laredo is the gateway to Mexico and the shortest differential mileage to any Rio Grande crossing is that from Devine to Laredo. The basis of the rates at this time on Mexican traffic is the lowest domestic rate to any one of the crossings, so that in case the differential is removed at Laredo and the common point basis of rates applied, the other lines would have to handle Mexican traffic, export and import, to crossings such as Eagle Pass, Brownsville, and El Paso, at the Texas common point rate.

Mr. Garwood: Well, they would either have to lose it or go out of that part of the traffic?

Mr. Hogsett: Yes; I mean that. They would have to either lose it or go out of the traffic.

Mr. Garwood: Then, the extension of the common point system to Laredo would, in so far as the Mexican business is concerned, in all probability force it at all of the Rio Grande crossings, Brownsville, Eagle Pass and El Paso?

Mr. Hogsett: Yes, sir.

Mr. Garwood: Well, in normal times, is that a considerable traffic, and of importance to the Texas lines?

Mr. Hogsett: In normal times it is representative of considerable traffic. The Mexican business is peculiar in that it is competitive, both from a rail standpoint and a water standpoint. It can move via the Gulf to the Coast points of the United States, either on the Atlantic or Pacific side.

Mr. Garwood: And those rates are, to some extent, affected
521 by the competition through Tampico?

Mr. Hogsett: Yes. That is the condition that the carriers were confronted with for many years, and then again, the principal tonnage, or you might say practically all of the tonnage, originates a considerable distance south of the Texas border line, either at El Paso, Eagle Pass, Laredo or Brownsville. Under those conditions, the lines used to meet the water competition.

Now, under the new conditions they have canceled the through rates, making their rates, generally speaking, the domestic rate to and from the border as the basis for their export and import rates.

Examiner Thurtell: But, Mr. Hogsett, there is a railroad leading south from Laredo, is there not?

Mr. Hogsett: Yes, sir.

Examiner Thurtell: And one from Eagle Pass?

Mr. Hogsett: Yes, sir.

Examiner Thurtell: And those railroads do not intersect the railroads from El Paso until you get to Torreon?

Mr. Hogsett: That is true.

Examiner Thurtell: That would be about 400 miles south of El Paso, would it not, or more?

Mr. Hogsett: Yes.

Examiner Thurtell: Now, there would not be any competitive

traffic that these American lines are seeking to compete for in this country until you get down in the vicinity of Torreon?

Mr. Hogsett: Well, that is true to a minor extent. The Mexican lines' policy—that is, since through rates have been canceled, their policy has been to make from points beyond Monterey, or where the Eagle Pass lines connect with the line running south from Laredo, they make rates to all of the crossings approximately the same, so that the question of competition based on the lowest rate—domestic rate—to and from any of the crossings is always before us.

Examiner Thurtell: Well, from points south of Torreon that would be the case, but from points north of Torreon, do they
522 undertake to keep the three gateways, Eagle Pass, Laredo and El Paso, on a parity?

Mr. Hogsett: They have not had a fixed policy for a couple of years, but they started out about three years ago doing that.

Examiner Thurtell: How about this railroad leading south from Laredo? Has it gone to pieces too?

Mr. Hogsett: No; it is still being operated.

Mr. Garwood: What one was that, Mr. Examiner?

Examiner Thurtell: I asked about the railroad leading south from Laredo, whether or not that was in operation.

Is the one from Eagle Pass in operation?

Mr. Hogsett: Why, it has been, but intermittently, I think,—well, almost as continuously as the Laredo line. That particular section reaches down into the mining district, west of Monterey, over there, and they have kept that line open most of the time. The Southern Pacific and International & Great Northern compete at this time, and have at all times, for this traffic that originates at Monterey and south of Torreon.

Mr. J. B. Payne: Now, Mr. Hogsett, one of the lines mentioned south of El Paso, do you recall that in lining up the hide rates. For instance, groups were made from certain points north of Torreon, we will say, to Juarez, and from that paticular group higher rates were applied from El Paso than from the other gateways?

Mr. Hogsett: Yes.

Mr. J. B. Payne: And what is your idea about the bulk of the tonnage as between Torreon and south of Torreon and north?

Mr. Hogsett: Why, Torreon and South, I believe, is very much greater.

Mr. J. B. Payne: It is very inconsiderable north of Torreon on the line of the old Mexican Central?

Mr. Hogsett: That is, comparatively speaking, except if you will set aside from that those mine products that originate nearer to the border.

523 Mr. J. B. Payne: Around Chihuahua?

Mr. Hogsett: Yes.

Mr. Garwood: Have you something else you wish to offer?

Mr. Hogsett: Yes.

Speaking of the International & Great Northern and its losses due to floods, it was brought to my mind about the Memphis scale of

rates having been fixed due to floods. While I have not assembled all of the data about floods, I want to say that the International & Great Northern crosses the Trinity River on its Palestine-Houston line at a point called Trinity, Texas. It crosses the Trinity River at a point immediately west of Palestine, at a place called High Bank.

It parallels the Brazos River from Waco to Navasota. It crosses the Brazos River between Hearne and Valley Junction.

It crosses the Colorado River at Austin.

In other words, with the exception of the line from Waco to Navasota, the entire railroad of the International & Great Northern is built across the waterways of this state, and we suffer enormous losses from floods from year to year. One year we had two floods, one in the spring and one in the fall, and I expected to have here some estimate of these losses from year to year, but so far, this is all I have:

During December, 1913, the following amounts were expended for material, supplies, etc., in making repairs:

On the Gulf division, $86,033.66.

On the Fort Worth division, $132,725.58.

On the San Antonio division, $5,667.31.

A total of $224,456.25, just for incidental repairs.

Mr. Stedman: Right at that point, Mr. Hogsett, while I think about it, was any of that flood damage in differential territory that year?

Mr. Hogsett: I do not know.

Mr. Stedman: It did not get any farther west than the Brazos River, did it?

524 Mr. Hogsett: I think it included the Colorado, Trinity and Brazos Rivers.

During April, 1915, the following amounts were expended for the same purpose:

On the Gulf division	$20,463.78
Fort Worth division	$12,312.07
San Antonio division	$10,100.85
A total of	$42,876.70

I have no figures available to show the actual expense in restoring roadway and tracks to the same condition as they existed before the flood. I will try to cover the territory south of San Antonio separately Monday, if possible.

Mr. Garwood: Mr. Hogsett, without consuming time at this late hour to go into detail on ground covered by other witnesses, I will ask you whether you have heard the testimony of Mr. Waldo and Mr. Atkins as to the impossibility, from a traffic standpoint, of applying rates of one level to one point in a state to and from Shreveport and removing discrimination between those points and Shreveport, and applying a different level of rates to other points in the same general territory to which no actual shipments have been made. I will ask you whether you concur with the opinions expressed by Mr. Atkins and Mr. Waldo on that proposition.

Mr. Hogsett: I do most fully.

Mr. Garwood: Have you any other figures or exhibits which you wish to submit at this time?

Mr. Hogsett: I believe not this afternoon.

Mr. Stedman: Were you going to adjourn at 4 o'clock, Mr. Examiner?

Examiner Thurtell: I was rather expecting to, if you cannot finish the cross-examination.

Mr. Stedman: I have quite a number of questions.

Mr. Pawkett: I have some questions, which will take fully a half hour, if not more.

Examiner Thurtell: Well, if it is your pleasure, we will
525 take an adjournment at this time until half past 9 Monday morning.

Whereupon, at 4:00 o'clock P. M., on the 19th day of May, 1917, the hearing in the above-entitled matter was adjourned to Monday, May 21st, 1917, at 9:30 o'clock A. M.

San Antonio, Texas,

May 21st, 1917—9:30 o'clock a. m.

Met pursuant to adjournment.

Present: Parties as before.

Examiner Thurtell: Come to order, please, gentlemen.

You may proceed, Mr. Hogsett.

L. M. HOGSETT resumed the stand.

(Direct examination continued:)

Examiner Thurtell: You had not finished your direct examination?

Mr. Hogsett: No, sir; I have some direct testimony yet.

At the close of the hearing on Saturday I had not completed my statement covering the operation and other conditions on the International & Great Northern justifying the application of the differentials south of San Antonio.

I testified to the weight of rails and character of ballast south of San Antonio. To complete the comparison I wished to make, I will say that north of San Antonio to Taylor, a distance of 114.1 miles, there are 103.5 miles of 75 pound steel rails and 10.1 miles of 90-pound rail. The character of ballast from Taylor to San Antonio is as follows:

80.85 miles of gravel, 2.26 miles of cinders and 7.52 miles of stone.

Speaking of the floods or various operating divisions of the International & Great Northern, that is, the Gulf, San Antonio
526 and Fort Worth divisions, I did not describe these conditions so that the places could be located or the divisions could be located.

In order to make this clear, will say that the Gulf Division covers

504.4 miles. It extends from Longview to Palestine, with branches from Overton to Henderson, and Troupe to Mineola; from Palestine to Spring, with a branch from Phelps to Huntsville; from Spring to Houston with a branch from Houston to East Columbia, and Palestine to Taylor.

The San Antonio division comprises 278.1 miles, extending from Taylor to San Antonio 114.1, with a branch from Round Rock to Georgetown, and from San Antonio to Laredo a distance of 153.7 miles.

The Fort Worth division comprises 323.5 miles, and runs from Spring to Bryan, 78.1 miles, with a branch from Navasota to Madisonville; from Bryan to Mart, with a branch from Calvert Junction to Calvert; from Mart to Fort Worth with a short stub line or branch into Waco.

I also referred to the profile of the International & Great Northern, practically covered in Mr. Waldo's exhibit, San Antonio and North, and I stated that the line north from San Antonio to Taylor was similar to that from San Antonio to Laredo. I expected to have a profile of the line south of San Antonio this morning, but unfortunately was not able to get it, and in order to give some idea of the similarity of the line, will say that the profile shows that in the distance from San Antonio to Laredo, 153.7 miles, there are 114.1 of ascending and de-cending grades; from Taylor to San Antonio a distance of 114.1 miles, there are 96 miles of ascending and de-cending grades.

The maximum grade north of San Antonio is 1.25 per cent, which grade occurs out of Austin, and at or near Bracken, Texas.

In the territory south of San Antonio there are 30 one per cent grades, the maximum grade being one per cent at or near Moore, Texas, this grade running for three miles.

I also testified as to the amounts expended for material,
527 labor and supplies to make necessary repairs to get trains over the road owing to floods in December, 1913, and April, 1915.

To give some idea as to what these floods mean, will say that the April, 1915, flood was during the time of the year that the International & Great Northern moved the onion crop, all of which originates in the territory south of San Antonio. During April, 1915, the International & Great Northern handled approximately 4,000 cars of onions. The actual number of cars is in excess of that. That is just as near to it as I could get in round numbers.

The result was that approximately 3,800 cars which the International & Great Northern would have received the long haul on to Galveston, Fort Worth and Longview Junction had to be diverted away from the International & Great Northern at various intermediate points, a great number of the cars for Galveston being diverted to the Southern Pacific at San Antonio. Also shipments for interstate points and North Texas points were diverted via the Southern Pacific to Houston, and after reaching Houston it was found that our Trinity River bridge, on our Houston to Palestine line, had been washed out, the Missouri, Kansas & Texas, Santa Fe, Houston & Texas Central were washed out, and our Brazos Valley line from

Houston to Fort Worth was washed out, and the traffic had to be diverted in various ways.

This had a material effect upon our revenue, and is given as an example as to what effect the floods have upon the revenue of the International & Great Northern, and for that matter all other lines in Texas.

It is impossible to even estimate the loss of money due to diverted traffic when these flooded conditions come about.

To give some idea of the operating conditions in the way of car mileage on the International & Great Northern will say that for the period of one year ending June 30, 1916, the loaded car miles southbound were 23,973,961; the loaded car miles north bound
528 were 19,459,733.

The empty car mileage southbound was 10,180,812; the northbound 13,308,907.

This is fairly representative of the car mileage from year to year on the International & Great Northern.

The empty southbound movement is quite an item during the period when we move what I usually refer to as seasonal traffic; that is, fruits, melons, and vegetables and live stock.

On the vegetable traffic originating in territory south of San Antonio, we are compelled to haul refrigerator cars from the extreme north end of our line, Fort Worth and Longview, for return loading.

On the live stock we have to secure the empty cars at the same points.

The other traffic originating on the International & Great Northern is not adapted to loading in this character of equipment. The territory served by the International & Great Northern is more of a consuming than a producing territory, and the greater number of loads being southbound, we do not, of course, have enough loads to return the cars when made empty.

While on the subject of cars, I will say that during 1916 the International & Great Northern purchased 500 box cars, which cost $424,660.00; 200 stock cars which cost $133,680.00; 300 ballast cars which cost $324,983.

The same cars at this time would cost double the money. The International & Great Northern needs more cars, but owing to its financial condition has not been able to supply itself with the necessary number of cars of International & Great Northern ownership.

The net corporate loss of the International & Great Northern for the fiscal year ending June 30, 1915, was $1,121,397.26.

For the fiscal year ending June 30, 1916, was $293,070.06.

Examiner Thurtell: How much indebtedness do you have per mile of line, Mr. Hogsett?

529 Mr. Hogsett: Well, it is in our annual report, Mr. Examiner; it would be somewhat difficult for me to dig it out here.

Examiner Thurtell: Do you remember what your interest bill is per year?

Mr. Hogsett: No, sir; I do not. There will be an exhibit filed later on to cover that. I am not in position to give these various figures, all of which are a matter of record and filed in the annual

reports to both the Texas Commission and the Interstate Commerce Commission.

Just one other feature regarding the differential south of San Antonio I want to mention, and that is that the class differential scale, under the Shreveport order, is less than the class differential scales that we apply on interstate traffic in that territory, which we have sought to justify from time to time, and still feel that we have justified by the statements and showing that I am making today.

The justification of the application of the differential rates, as I make them here, are not alone to cover the differential as is covered in the Shreveport order, but it goes to the justification of the higher differentials which we have continued for all times on interstate traffic.

530 Testimony of A. S. Stinnett, pps. 2180-2214.

A. S. STINNETT was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. Stinnett: My name is A. S. Stinnett.

Mr. Cowan: State whom you represent and all about that, Mr. Stinnett, first.

Mr. Stinnett: I am the pres-ent of the Panhandle Traffic League and also a member of the Traffic Committee of the Amarillo Board of City Development. And on behalf of the Traffic League and also the Tariff Committee, I wish to offer protests against the Fonda Tariff 2-B as unduly prejudicial and discriminatory against Amarillo and all the Panhandle.

Mr. Cowan: You might state who the Traffic League is composed of.

Mr. Stinnett: The Traffic League embodies some 45 of the different counties. In other words, the Panhandle counties are all differential, and Amarillo being the center of those counties is the headquarters of this league, which was organized for the purpose of combatting the rate discriminations and also looking out for the protection not only of the commercial interests, but of the agricultural and live stock interests. I am happy to say that I am authorized to testify to some extent by the farmers.

Mr. Garwood: Now, your Honor, I thought this was confined to class rates.

Mr. Stinnett: We will bring in the differentials along in connection with these classes on the basis of which everything is concerned in the Amarillo territory, because we have the differentials to pay.

The Panhandle will pay probably $6,000,000. per annum additional freight as a result of the Fonda Tariff 2-B, the enlargement of the differentials and the operation of the differentials in a double manner, so we cannot testify on the class rates without testifying

on the differential propositions, and I discussed that with his
531 Honor some time ago that we would——

Examiner Thurtell: Your class rates are in fact made up by means of differentials.

Mr. Stinnett: Made up by means of differentials, so we cannot separate them. They are inseparable.

Mr. Garwood: Just so we do not duplicate it some other time.

Mr. Stinnett: I am sorry it is the case, but it is, and we cannot escape it.

Now in speaking of the farmer, I feel that when his rates have been elevated to an abnormal extent that someone should testify in his behalf. He very often defaults on his interest and very often goes in the hands of the receiver and no allowance is made, no remission is made of freight or anything of that kind as a result thereof.

I mention that, your Honor, in view of the fact that there is a mutuality of interests between the farmer and the railroads and that it was set forth in the opinion of July 7th in the Shreveport case that many of the railroads in Texas, due to untoward conditions were not earning during given periods what they were properly entitled to.

Now that is the case in the Panhandle. They have lean years and the farmer suffers. He goes into the hands of the receiver and sometimes never gets out. When the farmer prospers the railroads prosper.

If the railroad fails to make money as a general proposition the farmers not only in the Panhandle but elsewhere fail to make money.

Mr. Terry: Your Honor, Judge Cowan just objected awhile ago to our inquiring whether a particular business was prosperous or not.

Mr. Stinnett: I am referring to the opinion of July 7th which recited that many of the railroads of Texas had not been earning money due to various causes, and the further fact that the
532 railroads have set up in this advanced rate case the floods and the boll weevil and other things as a prolific source of unprofitable business. But there have been years all along that have been profitable to the railroads for certain periods, and the same thing with the farmer, and it has been so in the case of the Panhandle, and I am connecting all these things up so as to show the relevancy, I think, before I get through.

Now on this question I bring in that of the rate level.

Now the measure of the rates—there have been scales proposed varying considerably and in behalf of the farmers I would wish to request that the level be not made so high as to work in the direction of an embargo upon the farmers' production.

As, for example, the farmers are now paying the differential on their grain and products out of the Panhandle; they are paying the differentials on agricultural machinery and most everything that they buy inbound; there is a differential that is charged between stations, whereas under the old Texas Commission scale there

ver perhaps a movement of 100 or 200 miles before there would be any differential.

The grain and hay produced in one section of the Panhandle have to be moved over into another section where there is as yet little agricultural development.

These rates between those points have been increased perhaps 20 to 35 per cent by the operation of the differentials. That is working a hardship upon the consumer, or the ranchman or the other farmer who is just starting in his business and has to buy his grain and hay.

Now just as the gentleman, Mr. Hardie, representing the Oklahoma City Chamber of Commerce offered some gratuitous objections to the old blanket rate system in Texas, I, on behalf of the commercial interests, in behalf of the agricultural and live stock interests, of the Panhandle, would pledge our fealty to that system.

Mr. Terry: Your fealty to which system?

Mr. Stinnett: The blanket rate system.

533 We believe it would be injurious to our best interests to have the blanket rate system abolished.

Now Mr. Hardie's idea, of course, was that we do away, as he said, with all state lines, that there should be an extended mileage scale, that Oklahoma City with preferential inbound rates would naturally control the commercial business of the Panhandle.

He was particular to state what was the necessity in the way of rates by which they could reach Amarillo, but never once stated what rates would get into Amarillo and then out again, which rates are essential as a basis for all jobbing and manufacturing business.

His extended class scale would be on a basis that Oklahoma City jobbers could distribute over the Panhandle and on such a basis as to cut out Amarillo competition.

Now we would not object seriously to the extended class mileage scale were it possible or deemed advisable to have a blanket system for carload classes and for carload commodities that would establish and maintain something of a parity on the inbound carload shipments, but if you are to retain the usual relation between the classes, less than carload classes, and the carload classes and commodities, it is very apparent that Amarillo, situated as it is not so far away from Wichita, Kansas, whose inbound rates are based upon the Missouri River and are necessarily—or not necessarily, but actually are very much lower than the inbound rates to Amarillo.

The same could be said of Oklahoma City. Denver is now watching and has a case pending.

I was talking to a Denver gentleman a few days ago and he said he hoped the Shreveport case would go on until we got rid of the blanket system, that Denver wanted the Panhandle trade. They are all looking forward to it.

Now we would also have discrimination against us in the establishment of these scales at Quanah and Sweetwater. They would have lower inbound rates carload and would have the same extended mileage scale for the distribution. They would have the ad-

534 vantage of whatever lower inbound carload rates they would necessarily obtain.

We are also closely allied with Galveston, the Gulf. A great deal of the shipments coming into our territory originate on the Atlantic Seaboard. We are rather the extreme mileage in that end of the estate from Galveston.

We feel that the entire scale could be blanketed up to 300 or 350 miles as against 245 miles as was the case with the old commission rates. In other words, that the maximum would be reached around 300 or 350 miles, joint line, class rates, likewise the case on carload classes and commodities, the rates blanketed on to Amarillo just as they have been.

We further feel that with the development that has taken place in the last few years the same blanket should be extended from Sweetwater to Amarillo and that the territory beyond Amarillo in all directions could remain in differential territory. I do not believe there would be any objection, and I am authorized to speak for the people in that, that they would be willing to pay differentials in that territory based upon Amarillo as the extreme western intrastate common point.

I believe right now to break up the blanket in Texas upon which the state development has been made would be revolutionary. I believe if that were ever done it should be done gradually. Business has adjusted itself to it, and it has proven successful in the operation.

We recall that the railroads themselves made voluntarily the first interstate common points and the Texas common points followed, and in this connection I wish to illustrate in a measure what the Texas Commission has done through the operation of this system.

We will recall that prior to 1890—I hope the Examiner will indulge me a little in going back to these propositions, because I have been closely interwoven with the development of the commercial and jobbing interests of this state going back to the year 1884 when there was very little interior business in Texas, but all of this will
535 have a direct relation on what I am undertaking to illustrate.

Prior to 1890 we had very few towns or cities in the interior of Texas, we had little or no manufacturing interests, very few flouring mills even. The State of Texas was engaged in the production of cotton and incidentally some grain in a small measure, and the remainder grazing. The state practically undeveloped. The state bought its packing house products, bacon and lard from St. Louis, Missouri, it bought its furniture from Michigan, it bought largely its corn from Iowa, its wheat and flour from Missouri and Kansas. The result was that at the end of the year the Texas farmer had very little left. It took practically all that he could produce to pay for the supplies that he had to buy from the outside.

You are all familiar with the fact that the Hon. John A. Ragan, the father, you might say, of the Act to Regulate Commerce between the states, the father of the idea to regulate commerce within the state, after succeeding in getting through the national legislative body the Act to Regulate Commerce conceived the idea of getting through similar legislation in Texas, and when such was accom-

plished he voluntarily offered to resign his exalted position in the United States Senate, where he had been in one chamber or another 25 years and returned to Texas, and accepted the chairmanship of the Texas Railroad Commission. And as I know from personal contact with Judge Ragan and many conversations I had with him the object was to bring about an internal development of Texas.

Judge Ragan pointed out that we needed manufacturers, we needed development, and that we would never get it in a thousand years if it continued that New Orleans, St. Louis and Kansas City, Chicago, New York and outside points controlled the commerce of Texas. Everything had to be shipped in and nothing developed and nothing manufactured within the state. I recall at that time Galveston was the largest city in Texas and as compared with other
536 Texas cities it had more commercial enterprises than any other city in the state, large wholesale houses and some manufacturing plants; a great deal of wealth and extended credit over the southern half of the state and extended its commerce over the entire state.

Judge Ragan conceived the idea of making such scales as not to operate a discrimination against interstate commerce but to operate in a manner that would encourage manufacturing, jobbing and building of cities and the general development of Texas.

I recall at that time the City of Dallas, a few thousand people, had two or three little jobbing houses, and I think in 1890 or 1888, something like that, they had two factories here, as I recall; one was baking powder and bitters and the other made baking powder and some few specialties.

The action of the Texas Commission at once stimulated internal improvement. Dallas began to grow, so did Waco, San Antonio, smaller cities sprang up all over the state, Wichita Falls, Abilene, Weatherford, Sherman, Paris, Temple, San Angelo and many others that I could mention. These cities engaged themselves at once in the development of their surrounding area. They contributed to the conversion of ranges into farms, into wheat fields or into cotton fields; they erected oil mills, flouring mills, grain elevators, and a multiplicity of industries of every kind. And to show how the magic worked, in 1890 the population of Texas was 2,205,523——

Mr. Terry: How much was it in 1836? Suppose you go back to that point.

Mr. Stinnett: I am taking the point of the beginning of the Commission, Judge Terry. That is the starting of the Texas Railroad Commission.

In 1900, 3,084,710; in 1910, 3,896,542; in 1917 estimated 5,000,000.

A chapter there illustrative of the remarkable growth and development of this state. And while all of this is true we feel that
537 with our vast undeveloped area of Texas we have just made a good start and that these industries ought to be promoted and such advantages afforded that would not let the outside cities that are enjoying preferential rates of one kind and another levy upon and absorb the commerce of Texas.

Now I want to illustrate a little point right here and show the point that I am endeavoring to make, and that is this theory, that if the Interstate Commerce Commission assumes the authority to remove discrimination against interstate commerce it could also assume and exercise the authority to remove any discrimination that might grow out of interstate commerce against that of the intrastate. That was the theory upon which Judge Ragan said we would develop Texas.

I will illustrate that with a little incident. Along in 1891 or 1892—I don't recall which—there was a great rate war on interstate freight. We had them in those days. As well as I remember the railroads and steamship lines had got into a general scrap and reduced the canned goods rate from Baltimore to Texas to 21 cents. That involved the rail haul from Baltimore to New York, steamship haul from New York to Galveston and a rail haul of several hundred miles from Galveston reaching the common points of Texas.

My firm had at that time as an adjunct a considerable canning factory at Alvord a local point some 50 miles from Fort Worth. This rate war was during September, about the time that the new canned goods began to move. This canning factory we had at Alvord had accumulated a large amount of canned goods, from 8,000 to 10,000 cases, that had to be sold and distributed. This rate from Baltimore with the old established canners in Maryland and other sections I could foresee, as the manager of that canning plant in connection with the wholesale grocery business, would absorb our product. I took the train to Austin and saw Judge Ragan personally. I said "Your theory has been to develop. If we never start the canning business in Texas we will never have it.
538 We produce the small fruits and vegetables enough in Texas that canned and preserved and conserved to supply 20 states."
I laid the whole situation before the Judge. He figured awhile. As well as I remember he showed that the railroads of Texas got out of that proposition about 3 cents per 100. The judge said "How would you like to have a 3 cent rate maximum in Texas? That would hardly pay the handling cost, but" he says "if the railroads can haul for 3 cents as their part out of this rate for Baltimore I do not see why they could not do it for you in Texas. How long would it take you to move those canned goods?" "Take about ten days." He says, "Well, we will talk it over and we will let you know. We want your canning factory to grow, we want other canning factories to come to Texas, and factories of every kind. We must develop them."

Judge Ragan's office 'phoned next day to my office that the 3 cent rate would be published the next day, to get busy and move the canned goods, and we did, and distributed the canned goods, and that was one of the pioneer canning factories of Texas. There are many now scattered all over the state.

I will explain another thing. About this time this revolution was beginning. The outside cities died hard. St. Louis, Kansas City, New Orleans and other cities without the state combined to attack the difference between the less than carload and the carload rates

in Texas. They maintained that there should be no difference; that a carload rate should be no lower than a less than carload rate, and they were agitating that question with the Interstate Commerce Commission with a view to having that brought about. There was great agitation in the jobbing and manufacturing circles of Texas. I recall having attended a meeting at Austin where there were several hundred business men in the state there to resist this threatened aggression.

Judge Ragan, with his prestige, after investigating the case, informed the railroads that if that point was pressed to a successful conclusion he would exact reprisals and would lower
539 rates within the state for the purpose of protecting the state's industries and the state's business.

After thinking the matter over and believing that he would do what he said he would do—he had the authority to do it—the matter was abandoned. And I mention that merely to emphasize the fact that that policy of affording the competitive advantages by which the commercial interests would prosper, by which manufacturing interests could be expanded, multiplied even, is the basis upon which the population and prosperity of Texas rests today.

I will also state that the extension of the common point west has been co-extensive with the development of the west, and at a time when we had in Texas not only some great railroad builders but some railroad presidents and managers who were in great sympathy with the development that we were undertaking.

I recall one notable character, General Granville M. Dodge, who was the president and builder of the Fort Worth & Denver when Wichita Falls was a little city of 1500 people. I wrote General Dodge asking if he would not authorize the extension of the interstate common point rate to that town if we would develop the city and the country, and that we would open immediately a large wholesale grocery establishment and that other wholesale houses would follow. The general answered and said "I am impressed with your idea and with the argument you set forth. I will wire you to meet me on my car at a certain time." He did. I spent two or three days with the General at Fort Worth and on the return trip he said "Mr. Meek, who is the vice-president and general manager of this line, will wire you in three or four days when the interstate rate becomes effective at Wichita Falls. Now, young man, make good your word. You develop that country."

That was the first interstate common point established, as far as I recall, west of Fort Worth. The business I had in mind was established and in three years from its establishment it was
540 doing around $2,000,000 per annum.

The following year I made a similar request as to the extension of common point to Quanah, where it rests now, to my sorrow.

The Denver road said, "On the same basis that you made a development at Wichita Falls you will probably make it at Quanah, and we will extend it to Quanah." We have a thriving little city at Quanah to-day.

The following year I repeated the request that they extend the interstate common point rate to Amarillo and the Denver road agreed, and we extended it to Amarillo. That was in 1891. "We will extend the common point rate to Amarillo and when it is done go ahead and establish your wholesale house."

In 1896 or 1895, I do not recall which at the moment, it became necessary for our firm to concentrate more thoroughly, with the western outpost at Quanah, and we asked that the interstate common point rate on the Fort Worth & Denver be restricted to Quanah, cancelled or withdrawn from Amarillo. It was accordingly done and in a measure it has been withdrawn ever since.

But in 1905 the growth of Amarillo and the development of the country was proceeding apace and the Texas Commission had their attention called to it by Mr. M. C. Nobles and other business men, and they were asked to extend the Texas common point to Amarillo and were pledged that in doing so they would be given in return a big business and a big development in that country, and that was done, and, of course, the growth of Amarillo is based upon that beginning.

The development out there is very recent, your Honor. In 1903 most of the Panhandle was devoted to grazing and live stock interests upon the open range. There came in the latter part of February a snow storm and blizzard and the snow averaged in depth 22 to 24 inches over the entire Panhandle, and there was a death loss that ranged anywhere from 35 to 75 per cent of
541 the entire live stock holdings of that region of the country.

The ranchmen had those lands, the lands had value, they knew they were fertile, and the idea was to continue the grazing, but so many of them suffered such losses that they had to convert their holdings practically into cash, and it was then that the cry for settlers arose and a great many of the ranchmen themselves took the lead and said, "We will make the development that should have been made in this country years ago. We will convert it into a farming country." And from that day to this there has been a steady stream of agriculturists and the development that has taken place along those lines has been surprising.

Now we come to the Shreveport proposition.

Shreveport is located on the Red River and so is Amarillo—not known as the Red River up there; it is the Palodura Canon, but it is the head waters of the Red River.

We hear Shreveport spoken of as to potential possibilities. I wish we could get rid of that word potential possibilities. In my judgment it is possible in the imagination and impossible in the execution. We have potential possibilities because Palodura Canon could have locks and dams and with enough money expended we could get boats all the way up there.

Mr. Garwood: As easy as Dallas?

Mr. Stinnett: Yes; I believe we could.

Mr. Garwood: Is Mr. Maxwell in town?

Mr. Cowan: Mr. Maxwell is not here.

Mr. Stedman: Do not take advantage of his absence.

Mr. Stinnett: I will say in that connection, not that I would criticize Dallas or restrict any of the opportunities of Dallas—it is a great city—but in going over the Government Engineer's reports the other day, it was stated it would take $15,000,000. to make a navigable canal out of the Trinity River, and also observing that Congress had just appropriated $200,000 a year for continuing the development, it was figured out that at that rate it would take 75 years, and I came to the conclusion at once that Dallas had better make a trade with Congress and say, "We will give you this
542 canal right now and let it stop where it is, and you give us $15,000,000. and we will build two railroads, one to the gulf and one to Amarillo."

Mr. Terry: Can you state how many millions it would take to carry the deep water up to the Palodura Canon?

Mr. Stinnett: We will get to that, you know. We want to bring that up from Shreveport.

Now this discussion on the Shreveport proposition has been continuous in Texas for a great many years. I have observed that from time to time, knowing there were certain rates made in the direction of Shreveport, knowing that Shreveport enjoyed certain preferential rates inbound—how the equalization would eventually come I did not know, but I had believed a permanent solution would be reached sometime when Shreveport and Dallas and these other points would be placed upon a parity, and I am firmly of the opinion the trouble will never be removed until they are.

But, at all events, Amarillo never felt that they would ever be interested, even remotely, in the Shreveport end of this controversy. The hearings that had taken place time and again referred mainly to those interested in a line drawn through Kansas City to Dallas and the Brazos River as the western boundary, to the Gulf. We were a long ways removed from that scheme.

When the Houston hearing took place we had representatives on hand but did not submit anything in the files, not but what we would have done so gladly had we felt we had any direct interest in the proposition and that it would be broadened as it was. As far as we were concerned we did not want to be guilty of any discrimination against Shreveport. We do not today. Shreveport never ships anything into our country; never anything that I know of that ever goes from our country to Shreveport. We were therefore amazed at the appearance upon the scene of Fonda Tariff 2-B,
and we feel probably we suffered in our end of the state from
543 not appearing at the Houston hearing and having something in the files or the record in the case that would illustrate our position and especially so it seemed to me that by our not doing so there might have resulted some relation of Fonda's Tariff 2-B with the circular 4751 that the railroads had submitted to the Texas Commission in 1915.

This circular 4751, or the tentative tariff, as I understand it, was a part of the Houston record. It was reviewed by the Interstate Commerce Commission, on the basis of which review the order of July 7th, authorizing the construction of Fonda's 2-B, was issued.

I could bring together the relation inasmuch as the Fonda Tariff 2-B excluded Amarillo from the intrastate common point advantage, and at numerous other points. Circular 4751 proposed to do the same thing.

We come now to a proposition that seems to me to be a paradox in rate construction. Ordinarily as business develops, as tonnage expands and enlarges, the tendency is to lower and not increase rates and not add enlarged differentials. Our situation at Amarillo had previously been reviewed by the Interstate Commerce Commission.

The railroad geography of the Panhandle began to change in 1906. Amarillo had operated on the Texas Common point rate, and in a hearing in 1906 before the Interstate Commerce Commission at Amarillo the Burnt District rates by which Amarillo was admitted to the interstate common point rates was cancelled and an intervening territory took place. But at that time we did not get more from the Interstate Commerce Commission because Amarillo could control the interior trade between Amarillo and the Texas & Pacific by virtue of there being no railroads from either direction and by virtue of the better wagon roads to Amarillo, and as
644 long as that situation existed Amarillo was contented. It did not want to interfere with the railroads.

In 1906 the Santa Fe built from Amarillo to Plainview and paused there for three years and Amarillo still was contented because there was no serious competition or injury resulting from the Texas & Pacific where Sweetwater was an interstate common point as well as a state common point.

In 1911 the Santa Fe began extension from Lubbock to Sweetwater.

In 1910 a line was being built from Quanah on to Paducah, extending in a direction of the lower trade territory of Amarillo.

We therefore saw that the trade of Amarillo was being menaced and that something should be done that would safeguard its interests along on a parity with what must be now competitive points.

I recall that I was chairman at that time of the Tariff Committee of the Amarillo Chamber of Commerce. We wanted to adjust that matter in a friendly way with the railroads. We called into conference the general freight agents of the Santa Fe, the Fort Worth & Denver and the Rock Island and pointed out the new geography as a result of these railroad extensions and pointed out that Amarillo must have relief, that Amarillo was larger and doing perhaps two or three times as much business as Quanah, and Sweetwater combined or ever would do.

These gentlemen said, "Yes, you are right. Something must be done. We will reach Sweetwater shortly and this line is coming up from Quanah and we must find some way to equalize things with Amarillo because it is proper."

We had correspondence and a conference and at length in Fort Worth in 1911 we worked out a compromise by which on something like 130 items Amarillo was to have the interstate common point rate from St. Louis territory and all territory beyond defined ter-

ritories through to the Atlantic Seaboard. That is, the interstate common point rate on carloads. We were perfectly willing
545 to permit the less than carload rates to remain in effect as they were.

The railroads through their representatives said, "This adjustment we consider liberal and fair and we will make up this list just as we have it composed here and we will file it with F. A. Leland, or Leland's Tariff Bureau at St. Louis, and we will get an early action on it. You will get the rates."

So this list was made up and docketed. We had a copy of it and it is a part of the records of the Interstate Commerce Commission now.

We were invited to St. Louis, our tariff committee, to confer with the railroads in session with Leland's, and did so, but it seemed there were some objections from eastern connections and the meeting adjourned without anything being accomplished, and we were invited to return later, and we did. But at that time it seemed that they had backed clear away from the list that was agreed upon. A very peculiar compromise scheme was worked out by the railroads and that was they knew, they said, Amarillo must be relieved, we cannot evade that, but we will do it this way: We will take Sweetwater, Big Spring, Brady, Ballinger and all those points out of interstate common point territory and put them in differential territory along with you, and in that way we will establish a kind of a general equilibrium. We objected to that, but any how it was done. That is, the tariffs were issued along that line and those points that were to be thrown out of the interstate common point protested strongly and the new tariffs were suspended and a hearing was ordered. Amarillo intervened and asked for a parity with the other points, producing in the record the agreement made with the railroads and their endorsement of the plan as just and right. That was known as I. & S. Docket 116.

In the opinion issued in that case by Judge Harlan of the Interstate Commerce Commission of April 1913, he upheld that
546 list of certain commodities. In other words, he denied the complainants' (Sic) prayer for taking those cities out of the common point territory and upheld the Amarillo contention and ordered the railroads to take care of their agreement. And such was done in a very exhaustive and able opinion.

I would like, your Honor, that a note be made, if such can be done, that the opinion of Judge Harlan in that case be made a part of this record. I have not the original opinion.

Examiner Thurtell: It does not need to be made a part of the record. You may make reference to it.

Mr. Stinnett: Yes; make reference to it. And I would also like that record in that hearing to be made a part of the record, because there is some very valuable information in that in evidence furnished both by the railroads and by the shippers of Amarillo and by the Panhandle.

Examiner Thurtell: That cannot be done unless you actually excerpt that record and file it.

Mr. Stinnett: Very well. The opinion, however, will cover the case very clearly.

With that order from Judge Harlan operative we have been operating under those rates by which Amarillo is almost an interstate common point. We have the parity with Fort Worth and Dallas and other interstate common points, and I was apprehensive that in the opinion of July 7th in this case, whether the Honorable Commissioner Hall was familiar with the fact when he stated that he would make the common points from Shreveport—that is, apply the rates from Shreveport to Texas common points and make these common points co-terminus with the interstate common points—I was apprehensive that he was probably unmindful of the fact that leaving Amarillo out Amarillo in almost all practical respects was an interstate common point, having those special rates covering most everything that is handled on an interstate parity and being an
547 interstate point from the Pacific Coast, the intermountain states and the northwest. It seemed to me that if that had been comprehended more fully in the rendering of that opinion Amarillo would not have been eliminated from the common point territory, notwithstanding the suggestion was made in the tentative tariffs in the Houston record, as embodied in circular 4751, which was merely the idea of the railroads, as I understood it, as a means to increase their revenues in Texas, and in the discussion of such at Austin in the hearing of 1915, some of the very eminent traffic men representing the railroads in an effort to compromise that proposition suggested to me among others that that scheme would work out as conceivable to them as a good means of getting additional revenue, but that they were not so wedded to that or any other scheme, probably pursuing that as a line of least resistance, but they would subscribe probably to some other scheme, or the old scheme, if it gave them the revenue that they needed and to which we do not object, and do not today, object to the railroads having abundant earnings but we do insist on a parity with our competitive points.

Now in the opinion of Judge Harlan he stated that in his judgment the great panhandle was rich in promise. He gleaned that from the record which was made. And that he would justify his action upon that belief along with other facts. And we are happy to state that all we predicted and promised for the future of our success to Judge Harlan has been fulfilled manyfold.

Now, Amarillo's policy has always been most liberal to the railroads, and I believe so much so as to be entitled to some very strong claims upon their consideration, or any tariff or system of tariffs that they would subscribe to or urge.

The Pecos Valley Line from Roswell extended into Amarillo in 1895. It was given right-of-way through Potter and Randall counties to Amarillo and 30 acres of ground in the heart of Amarillo for terminals and cash bonus of $25,000.

548 The Southern Kansas Santa Fe Line was constructed from Panhandle, Texas to Amarillo, a distance of 28 miles in 1907. It was given by Amarillo the right-of-way from Panhandle to

Amarillo and 40 acres of ground additional in the city, and the estimated cost of this right-of-way and additional ground was $125,000.

As a further evidence of Amarillo's co-operation with her railroads, she undertook and succeeded in putting through the Legislature of the state an enactment by which the Southern Kansas was permitted to take up its rails from Washburn back to Panhandle so that a direct line could be built from Panhandle to Amarillo, and this cost an additional sum of $10,000.

The Rock Island extended its line to Amarillo in 1907 and was given a right-of-way by Amarillo from the Oklahoma line to and through Amarillo, a distance of some 110 miles, which cost Amarillo about $25,000.

Amarillo also donated $40,000 cash and 15 acres of ground in the heart of the city for the Rock Island.

The Fort Worth & Denver extended its line to Amarillo in 1890 and was given its right-of-way and terminus within the city.

In this way Amarillo has given her railroads several hundred thousand dollars and in the last gifts to the Santa Fe it was understood—rather a gentleman's agreement—that the Santa Fe would erect very extensive machine shops in Amarillo having employees and a payroll of perhaps fifteen hundred, as large as they had in Newton, Kansas.

The machine shops and round houses were established at Clovis, New Mexico, instead and are there yet.

The Rock Island agreed with Amarillo through all of what Amarillo had done for it that they too would establish at the end of a certain number of years large roundhouse and machine shops with a big payroll. Just a day or two or a week or such a matter before the time expired they put up a roundhouse that would hold one engine and a tool chest in it, and that is all that Amarillo derived from it.

549 But those things are ancient history and are only referred to here not in any spirit of resentment against these lines to whom we are undertaking to give our co-operation in all respects, but we mention them to illustrate our belief, and a just belief, that we are entitled probably to a much—unquestionably to a much better consideration in the making and the construction of rates than we have received voluntarily at their hands heretofore.

We wish to go ahead with those great transcontinental lines of road and assist the great work of further development, and they can never do more for the development and the upbuilding of the country that is destined to become an empire than Amarillo will do and that Amarillo is doing now.

The city of Amarillo has taxable values of twelve and a half or thirteen millions, and under its charter it can appropriate two mills for development purposes. That fund alone amounts to about $25,000 per annum and this is supplemented by donations from the citizens generally and applied to the promotion of every line of development of industry that will attract settlers and will result in the development of the entire Panhandle.

Your Honor, I do not want to prolong this session. I have just a little more here I wish to have go into the record.

The present status of Amarillo, briefly stated, in comparison with that which went into the record in 1912 before the Interstate Commerce Commission as follows:

The present population of Amarillo is 19,000; there are three trunk lines, the Santa Fe, Rock Island and Fort Worth & Denver;

It does a wholesale and manufacturing business of $20,000,000 per annum;

It has an agricultural implement business of some $2,000,000. per annum, such being handled by five of the largest agricultural implement houses operating in Texas;

There are five banks with a capital of $700,000;

It has bank deposits of $5,500,000, and bank clearings for 1916 of $25,000,000;

550 It is recognized by Congress in making it the site of a Federal Court and giving it a Federal Building at a cost of $250,000;

It ranks ninth in twelve first class post offices in Texas;

Postal receipts for the fiscal year ending March 31, 1916, $69,000;

Postal receipts for the fiscal year ending March 31, 1917; $89,000;

Has $100,000 per month postal money order business.

I believe I can state as a fact that if Amarillo is permitted to go on with its growth, with its development that in a very few years the Panhandle of Texas will produce and ship more wheat than the State of Kansas.

Amarillo is the center of 26,000,000 acres of fertile land, 90 per cent of which land is tillable, and as rich as could be found in the United States. At the present time there are 4,500,000 acres under cultivation; possibly this year 750,000 acres in wheat.

In 1915 the Panhandle produced over 10,000,000 bushels of wheat.

Now I am practically assured there will be 12,000,000 to 15,000,000 for 1917.

In 1916 the Panhandle produced and shipped above 23,000,000 bushels of kaffir, maize and oats and other grain, and will probably produce and ship this year from 30,000,000 to 40,000,000 on account of the increased acreage. Gang plows turning 38 to 40 acres a day are busy the year around.

Shortly there will be several million of acres of that great region in cultivation engaged in the production of wheat, oats, kaffir, maize and other products that will contribute to the prosperity of Texas and the Nation.

There are two million cattle above the quarantine line, or in the Panhandle country. These cattle consume about 130,000

551 tons per annum of cotton seed cake. Cotton seed cake is drawn from central and South Texas, no claims on it. They feed cattle to enlarge their weights and finish them for market at Fort Worth, Kansas City and other places.

The railroads haul the grain, the hay, from the Panhandle to Tidewater to the flouring mills in the State of Texas, and load back with lumber, cotton seed cake, tropical fruits and vegetables, potatoes and

onions from the southern part of the state. And this interchange of commodities does away with any one way haul. They have got an enormous traffic from the south to the great Panhandle and from the great Panhandle to the south. And if for no other purposes than to conserve their prosperity the work of development should be promoted.

In point of hogs, Hale County, 70 miles from Amarillo, leads Texas. There are several other counties, right along close to Hale County, and of the hogs that supply the raw material for the Fort Worth and Dallas packing houses over one-half originate in the Panhandle, and in fattening and feeding these hogs we not only use Panhandle grain but drop down and help the south Texas and central Texas farmer by taking his peanut cake. He ships enormous quantities of that to the Panhandle, because the livestock and hogs in the Panhandle are immune from cholera and other diseases that makes the future production of grain in the Panhandle to make it the great hog producing section of the United States, just as it is leading the world in the production of high grade livestock because of its water, its climate, its conditions that are conducive to the production of the finest grades of livestock in the world.

Now it is upon this basis that we will rest our appeal for an equalization and that as far as we are concerned whatever is done we are perfectly willing that Shreveport be admitted. We wish, however, that our rate parity be maintained, and let these rates be blanketed out to Amarillo as indicated in the earlier part of my testimony, and with that adjustment, with Shreveport admitted to it with all its advatages, we will pledge renewed growth and expansion, commercial and agricultural development, in the Panhandle of Texas.

552 Testimony of G. S. Maxwell, pps. 1887-1890.

There is another feature about this tariff which I should like to call attention to, and that is that in applying the rate from Shreveport westward, straightaway, toward El Paso, we reach the same rate 601 miles west of Shreveport that applies from El Paso eastbound for 237 miles.

In other words, it costs El Paso just as much to ship *last* 237 miles as it costs Shreveport to ship west 601 miles.

There is another feature about the tariff which I think should be corrected, and that is the question of differential territory.

In the first place, I do not believe that it will be possible to devise a tariff based upon common point and differential territory that can be made applicable alike to Shreveport and Texas points without creating undue and unjust discrimination against the Texas points in favor of Shreveport.

Wherever you have a blanket system applying from Shreveport, it is bound to create a twilight zone in Texas, somewhere, where the rate from Shreveport to that point will be the same as from the Texas points centrally located, I might say, Dallas, Fort Worth, Sherman or Denison, where the rates will be absolutely the same, and that the

natural advantage, geographical advantage, enjoyed by those Texas cities as compared to Shreveport will be absolutely removed.

In order to overcome that, our suggestion will be that the differential territory will be discontinued, and that mileage tariffs be substituted showing straightaway scale, which, in this particular instance we would suggest be carried out to a distance of 850 miles, and which would absolutely overcome any chance for discrimination on account of natural advantages that might be present due to the closer proximity of one town than another to the point of consumption, or the point to be served.

There is another feature about the tariff which will create a discrimination of some character as against the Texas cities, and that is the fixing of a maximum distance at which the one and two
553 line rates will merge. That is, where the one line rate will be considered the maximum for the two line haul, in the present tariff, I think that distance is reached at 350 where the one line rate is the maximum at that distance for a joint line haul.

That creates discrimination against Texas cities, for the reason that in operating west many instances occur where the Texas cities do not get the benefit of that difference, where it would inure to Shreveport, and the proposition which we have to offer will suggest either one of two propositions; that is, the elimination of the joint line haul probably altogether, as was done in the Memphis case, or the fixing of an arbitrary which will be reasonable and apply uniformly throughout.

The application of the rates in Fonda's Tariff 2-B to the Texas points intrastate has had the effect of creating conditions which have become most intolerable at various points, and when light is fully shed, I am sure that the Commission will agree with us.

There are a great many places in Texas that cannot, in any manner, be affected by discrimination in favor of Shreveport, because they are not in a position to compete with Shreveport, not Shreveport with them, where rates have been advanced very heavily, to meet the construction placed upon the Commission's order by the railroads.

And here I will introduce Exhibit No. 1, which is a comparison of Texas Railroad Commission class rates and rates published in Fonda Tariff 2-B, showing the abnormal advances between points in Texas where no competition with Shreveport can exist.

(The statement in question, consisting of one page, so offered and identified, was received in evidence and thereupon marked Interveners' Exhibit No. 1, Witness Maxwell, received in evidence May 4, 1917, and is attached hereto.)

Mr. Terry: We do not want to interrupt the thread of Mr. Maxwell's story, but we would just like to object to these broad
554 assertions he is making, as, "no discrimination can exist." It is too general. Just let it go in subject to that objection.

Mr. Maxwell: On this exhibit, I will not undertake to read off the figures; I think it speaks for itself. The different points are

readily located in Texas as being far removed from the Shreveport zone, and the percentage of increase in the rate is enormous, to say the least.

El Paso to Vinton, a point 17 miles from El Paso, over 820 miles from Shreveport, the rate has been advanced 73 per cent in order to satisfy Shreveport's claim of discrimination.

555 Testimony of C. C. Dana, pps. 4341-4441.

C. C. DANA was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. Terry: Mr. Dana, you are General Freight Agent of the Panhandle & Santa Fe Railway Company?

Mr. Dana: I am.

Mr. Terry: That company was formerly known as the Southern Kansas Railway Company of Texas?

Mr. Dana: Yes, sir.

Mr. Terry: It owns a railroad from Higgins on the Oklahoma line via Amarillo to Farwell on the New Mexico Line?

Mr. Dana: Yes, sir.

Mr. Terry: It operates under lease all the lines of the Pecos & Northern Texas except the line from Coleman to Sweetwater?

Mr. Dana: Yes, sir.

Mr. Terry: Also operates under lease the line of the Pecos River Railroad in Reeves County, Texas?

Mr. Dana: Yes, sir.

Mr. Terry: Mr. Dana, you have prepared a number of Exhibits in this case and it will save time if you will offer your exhibits and make such explanations as you think are appropriate as you offer each exhibit?

Mr. Dana: The first exhibit which I desire to offer, namely, my Exhibits A to K inclusive will be submitted together, because they relate wholly and entirely to the question of divisions. They have been prepared, because, as I understand it, in the Texas advanced rate case, as well as again in this case, some intimations have been made that the poor showing of the Texas Railroads was due in part,

556 where the parent lines outside of the state owned the Texas Corporations, to the alleged fact that the parent lines through divisional arrangements were exacting a larger proportion than was proper of the revenues accruing upon the through rates.

(The statements in question, so offered and identified were received in evidence and thereupon marked Defendants' Exhibits Numbers A to K inclusive, Witness Dana, received in evidence May 18th, 1917, and are attached hereto.)

Mr. Dana: The basis of divisions between the Atchison, Topeka & Santa Fe Railway and the Panhandle & Santa Fe Railway upon all classes of interstate traffic except California, having origin or des-

tination upon the latter, is a straight mileage pro rate with a minimum of 25 per cent to either line. The same basis of divisions obtains between the Gulf, Colorado & Santa Fe Railway and the Panhandle & Santa Fe Railway. These divisions are published in Santa Fe System percentage sheet Number 3320-C, a copy of which has been filed with the Commission.

And I want to state at this point that accompanying these exhibits A to K is an appendix which contains excerpts from the various division sheets covering the different matters which will be discussed. That will be found in the sheets last attached to the set.

Divisions upon California traffic between the coast lines of the Atchison, Topeka & Santa Fe Railway and the Panhandle & Santa Fe Railway upon all classes of interstate shipment having origin or destination upon the Panhandle lines, that is, the Panhandle & Santa Fe Railway, are also calculated upon the same basis or mileage prorate except that a minimum of 100 miles obtains instead of 25 per cent, and a terminal charge of 5 cents per hundred pounds is in some cases deducted. This deduction is general between all lines and does not exist solely in the case of the Panhandle & Santa Fe Railway. The basis of the California divisions is covered in Santa Fe System percentage sheet Number 3046-F, also filed with the Commission.

557 Divisions with the Texas lines other than the Gulf, Colorado & Santa Fe Lines, Fort Worth & Denver City Railway and the Texas & Pacific Railway, the Panhandle & Santa Fe Railway's direct Texas connections are determined by the use of the customary Texas basis on a revenue prorate, using the local rates of each line as factors, first setting aside the differentials which accrue to the Panhandle & Santa Fe Railway, or should there be a movement between two lines in differential territory, of course each would get its differential for the distance traversed in differential territory over its line.

Divisions with the Fort Worth & Denver City Railway are calculated on the same basis as with the Gulf, Colorado & Santa Fe Railway; that is, a mileage prorate using percentages specified in Item 345-A, Supplement 4, to Santa Fe System percentage sheet 3120-B, and to this line, the same as to the Gulf, Colorado & Santa Fe Railway, is allotted its proportion of the differentials which in the case of the other lines accrues solely to the Panhandle & Santa Fe Railway.

Divisions with the Texas & Pacific Railway are calculated upon a mileage basis as set forth in items 590-A and 595-A of Santa Fe System percentage sheet 3082-A.

Panhandle & Santa Fe differentials, however, in the case of the Texas & Pacific Railway accrue solely to the Panhandle & Santa Fe Railway.

Copies of all of the percentage sheets mentioned in so far as they relate to the question at issue, as I stated before, may be found in appendix A to these exhibits.

The mileage prorate in effect between the Panhandle & Santa Fe Railway and the other lines of the Santa Fe System is that which has been generally adopted as equitable and fair to all interests by lines in Western Trunk Line and Trans-Missouri territories. It appor-

tions the revenue upon the basis of the haul at the same time recognizing by its provision for a minimum of 25 per cent for 100
558 miles that the short line is entitled to some compensation beyond what it might receive on actual mileage prorate.

This statement will be found, I believe, to compare very favorably with the revenue prorate which is in effect between most Texas lines and the fact that the mileage prorate is the basis of divisions between the Panhandle & Santa Fe and the Fort Worth & Denver City Railways seems to me to be sufficient evidence of its fairness to both sides.

Mr. Terry: What differentials do you get on the California business and Trans-Continental business?

Mr. Dana: I am coming to that, Judge.

If, however, we need to show any further defense of this basis of divisions between lines parts of the same system it seems only necessary to mention the advantages and economies which lie in the joint use of equipment, motor car, advertising, tariff printing, car repairs, soliciting, agency expenses and so forth, not to mention the dominant advantage of the exclusive enjoyment of the unrouted freight and passenger traffic originating upon the lines or secured by the representatives of the Santa Fe system as a whole.

Upon the overhead traffic, or the passing over traffic, that is, the business which the Panhandle & Santa Fe Railway handles for the Atchison, Topeka & Santa Fe Railway between the New Mexico-Texas State line and the Oklahoma-Texas state line, the Panhandle & Santa Fe Railway receives a fixed division of 5 mills per ton per mile regardless of the rate. In the handling of this traffic no terminal expense by the Panhandle & Texas is involved. It is received from and delivered to the Atchison, Topeka & Santa Fe Railway at the State line in either direction in solid trains and I believe really constitutes the cream of our business.

For the fiscal year ending June 30th, 1916, it amounted to 334,-790,930 ton miles and $1,795,569.82 in revenue, constituting 58.7 per cent of the ton miles and 42.9 per cent of the entire rev-
559 enue of the Panhandle & Santa Fe Railway.

Examiner Thurtell: Do you mean of the freight revenue or the entire revenue?

Mr. Dana: Of the freight revenue I think only, Mr. Examiner. Prior to the construction of the Farwell-Coleman cutoff this overhead or passing over business destined to Texas and southeastern points, this traffic constituting the minor portion of the overhead business, was handled by a Texas line in no way affiliated with the Santa Fe System at an average rate per ton per mile upon beans, dried fruit, potatoes, apples, canned goods, and cirtus and deciduous fruits, which constitute the bulk of the traffic, for 4.7 mills as compared with the Panhandle & Santa Fe Railway's present division with the Atchison of 5 mills.

Exhibits A and B, which are really a recapitulation of Exhibits C to H inclusive, show the much greater division per ton per mile which this company receives on traffic from Kansas City, St. Louis, and Chicago, all considered, as compared with traffic from Fort

Worth, Dallas and Houston, only class rates being used in making the comparison. Those in the latter instance, that is, in the instance of the Texas intrastate rates, being the figures formerly prescribed by the Texas Railroad Commission.

To illustrate, the distance from Higgins to Lubbock is 247 miles and our general average division on traffic moving from Kansas City under the class rates to that point is 27.6 mills per ton per mile as compared with the general average division of 19.5 mills per ton per mile on traffic from Fort Worth moving under class rates from that point to Amarillo by the Texas & Pacific Railway, Sweetwater, and Panhandle & Santa Fe Railway, the latter's haul being 243 miles.

Even on Chicago business where the total haul interstate is increased 451 miles over Kansas City and the rate per ton per mile therefore reduced the Panhandle & Santa Fe proportion on
560 Lubbock traffic is 22.3 mills as against only 19.5 mills on Fort Worth traffic.

The total haul from Kansas City to Lubbock is 673 miles, from Chicago 1129 miles and from Fort Worth 323 miles. The Fort Worth division being based upon the shortest haul ought under generally recognized theories of rate making and divisions to be the greatest whereas it is the least.

Whereas a comparison of the rates and the divisions from Kansas City with those from Houston is still more favorable to the former. For instance, the distance from Higgins to Plainview is 199 miles. Our general average division on Kansas City-Plainview class traffic is 28.8 mills per ton per mile.

From Sweetwater to Plainview is 168 miles and our general average division on Houston-Plainview class traffic via the International & Great Northern and Texas & Pacific via Sweetwater is 22.2 mills per ton per mile, the total distance from Kansas City to Plainview being 626 miles as compared with 627 miles Houston to Plainview.

Exhibit I is a statement similar to the preceeding exhibit reflecting the revenue accruing to the Panhandle & Santa Fe and the Gulf, Colorado & Santa Fe Railways on traffic originating at points in California destined to Houston, Texas, routed via Farwell and Sweetwater.

It will be observed that the general average intrastate class rate—and by that I mean the class rates as carried in the Railroad Commission of Texas Class tariff Number 3—from Farwell to Houston, distance 64 miles, was 16.05 mills per ton per mile, is less than the proportion of the average through class rate accruing to the Panhandle & Santa Fe and Gulf, Colorado & Santa Fe on traffic from Los Angeles, San Diego and Fresno, distances 1788, 1871 and 1901 miles respectively, and but slightly exceeds the rate per ton per mile from Oakland and San Francisco for three times the distance.

Exhibit J sets forth a comparison of the revenue which accrues to the Panhandle & Santa Fe Railway upon stock cattle moving from points upon its line to interstate points as against the revenue
561 accruing upon interline intrastate movement for approximately the same distances.

It will be noted that in both cases the interline interstate movement yields the greater revenue.

Exhibit K is a comparison of the proportions in cents per hundred pounds accruing to the Panhandle & Santa Fe Railway upon kafir corn and milo maize originating at various points and destined to Kansas City and Chicago as against a typical interline intrastate movement in Texas, and here again it will be noted that for a like distance the interline interstate proportion is greater than that of the interline intrastate.

Mr. Terry: Do you consider, for the reasons stated, that the interstate divisions are fair to the Panhandle & Santa Fe Railway Company?

Mr. Dana: I certainly do, Judge.

Mr. Terry: Referring to this Trans-Continental California traffic on which you get 5 mills, the bulk of that moves between the state line at Higgins and the state line at Farwell?

Mr. Dana: Practically all of it, and all we have to do with that jump is to put an engine and caboose on it. It comes to us in solid trains and we deliver it again to the Atchison, Topeka & Santa Fe in either direction in solid trains. I do not suppose that on 90 per cent of the movement we ever switch a car other than taking of- the caboose and putting on another caboose at one of the freight terminals.

Mr. Terry: That is the most economically handled kind of business that a railroad could possibly have, is it not?

Mr. Dana: I should say so.

Mr. Terry: You have a favorable grade line between Higgins and Farwell, have you not?

Mr. Dana: Yes, sir. While it was done prior to my going to Amarillo I understand that the mainline from Higgins to Farwell—the grades were not only reduced but the curves were eliminated as far as possible and a very considerable expense was gone to to make a line which would enable us to handle at the very lowest possible cost trans-continental traffic.

562 Mr. Terry: You use on that trans-continental business so-called Mallet Engines?

Mr. Dana: Yes, sir.

Mr. Terry: Practically two engines in one?

Mr. Dana: Yes, sir.

Mr. Terry: We showed the Chairman of the Texas Railroad Commission one of those Mallet engines hauling 75 loaded cars in a train there one day. Did you ever see anything like that?

Mr. Dana: Often.

Mr. Terry: All right, you may go ahead with your next exhibit.

Mr. Dana: I will offer next Exhibits designated as L-1 and L-2.

(The statements in question, so offered and identified were received in evidence and thereupon marked Defendants' Exhibits Numbers L-1 and L-2 respectively, Witness Dana; received in evidence May 18th, 1917, and are attached hereto.)

Mr. Dana: Exhibits L-1 and L-2 contain examples of what we are pleased to call discriminations which would be created between Texas

points by a partial application of the so-called Shreveport rates in Texas.

Taking up Exhibit L-1, there is no instance we can find where to us it would seem to be practicable to apply within a certain territory within the state of Texas the scale of class rates of the Railroad Commission of Texas class tariff Number 3 without a discrimination against other Texas towns, which would be governed by the Shreveport scale of rates.

As we see it, no matter wherever the dividing line were placed the discrimination would exist. For instance, if the dividing line were placed at Fort Worth, or the Shreveport scale were applied between Texarkana and Fort Worth, the Railroad Commission of Texas scale between Texarkana and points west of Fort Worth, the latter would pay less than the former and the same in greater or less degree would be true if the dividing line were placed at Wichita Falls or Quanah or any other point.

563 Under Exhibit L-1 if the Shreveport scale were applied between all points on and east of the Gulf, Colorado & Santa Fe Railway Gainesville to Galveston, also between *just* points and points west of that line and the Railroad Commission of Texas scale were applied between all points west of the line named, the rates at intermediate points would not be higher, but a different discrimination would exist in that the scale of rates in East Texas on and east of the Gulf, Colorado & Santa Fe Railway on the Shreveport scale would be on a higher basis mile for mile than the scale applied in the territory west of the Gulf, Colorado & Santa Fe Railway on the Railroad Commission of Texas scale.

I think other instances, such as those mentioned could be named and it would not make any difference what portion of the state were selected in making the comparisons, I think the same conditions would exist. And, as we see it if the application of the Shreveport scale were made in one portion of the state and the Texas Commission in another portion of the state there would still be a discrimination against Shreveport as well as a discrimination in favor of the Texas towns towns to and from which the Shreveport scale was not applied.

My next exhibit is designated as Exhibit M.

(The statement in question, so offered and identified was received in evidence and thereupon marked Defendants' Exhibit number M, Witness Dana, received in evidence May 18th, 1917, and is attached hereto.)

Mr. Dana: Pages 1, 2 and 3 of this exhibit make a comparison of interstate rates fixed by the Interstate Commerce Commission with the rates for similar distances fixed by the Railroad Commission of Texas and it will be observed that in the instances cited the interstate rate is greater per ton and in cents per ton mile than the intrastate rate. Not only this, but in the instances cited the interstate rate general average in cents per ton per mile is greater than the intrastate

figure based upon the rate between the points named as provided in Texas Lines' tariff 2-B I. C. C., 33.

564 You will note that at the bottom of the pages is shown the docket Numbers of the Interstate Commerce Commission hearings in which these various rates were fixed.

The circumstances or the distances are practically the same and the conditions under which the traffic is handled between the points named is somewhat similar, though the density of traffic, between Kansas City and Clovis, including the Trans-continental business, is much heavier than that between Galveston and Farwell, for instance, or between Kansas City and Amarillo. It is heavier than it is between Houston and Amarillo.

Page 4 of the exhibit contains a statement of divisions of the Interstate rates allotted to the Panhandle & Santa Fe by the parent line as compared with the divisions upon Texas intrastate traffic.

I will next offer my exhibits N-1 and N-2.

(The statements in question, so offered and identified *was* received in evidence and thereupon marked Defendants' Exhibits Numbers N-1 and N-2, respectively, Witness Dana, received in evidence May 18th, 1917, and is attached hereto.)

Mr. Dana: Exhibits N-1 and N-2 were compiled by our auditor covering the freight traffic of the Panhandle & Santa Fe Railway for the fiscal years ending June 30th, 1915, and 1916, the business being segregated as to the commodities as well as movements, which latter are divided between local, interline intrastate, and interline interstate, the latter two being still further classified as between traffic originating upon the Panhandle & Santa Fe Railway and that received from connecting lines.

In examining these statements and making any comparisons of the average rate in cents per ton per mile between intrastate and interstate business it should be borne in mind that in the column covering interline interstate traffic received from connecting carriers all of the overhead business which the Panhandle & Santa Fe Railway handles for the Atchison, Topeka & Santa Fe Railway between Texico, Farwell and Higgins, and for the Atchison and the Gulf, Colo-

565 rado & Santa Fe Railway between Texico, Farwell and Sweetwater is included.

Upon this overheard business, as has already been stated, the Panhandle & Santa Fe Railway performs no other service than the road haul, and, as might be expected, its revenue per ton per mile is naturally less than on other traffic for which it has to furnish terminals, stations, team track facilities, perform switching and so forth. Notwithstanding this it is interesting to note that upon the three commodities which form the major portion of the Panhandle & Santa Fe Railway's traffic, namely, grain, live stock and merchandise, the average rate in cents per ton per mile upon grain for both the years 1915 and 1916, and upon live stock for the year 1916, were greater in the interline interstate movement than in the interline

intrastate movement, the average hauls in each case being approximately the same.

From Exhibit Number N-2 covering the brick traffic movement on the Panhandle & Santa Fe Railway for the fiscal year ending June 30th, 1916, it will also be found that the entire Texas intrastate business as compared with the total of both interstate and intrastate traffic constituted 24.2 per cent of the total tons, 20.8 per cent of the total ton miles carried and 26.5 per cent of the total revenue.

We think this indicates—we know that it indicates the small portion of the intrastate traffic or the small portion which the intrastate traffic constitutes of the entire business of the Panhandle & Santa Fe Railway, and that it certainly would be difficult, if not impossible, to maintain the line in the present state of efficiency and offer the service that we do without the interstate business.

Mr. Hershey: Mr. Dana, before going on with your next exhibit, the Santa Fe system has a through route from the east to Cali-
566 fornia through La Junta, Colorado over the Raton Mountains by Albuquerque?

Mr. Dana: Yes; for years before the Belin Cutoff was built that is the way the trans-continental traffic moved, at least 30 years. I think it was built to the Raton Pass in 1878 or 1879.

Mr. Hershey: The Santa Fe Railway had engaged very extensively in the trans-continental business for that length of time, 30 years at least?

Mr. Dana: Yes, sir.

Mr. Hershey: How long has this line in connection with your line been completed.

Mr. Dana: I think in 1911.

Mr. Hershey: 5 or 6 years?

Mr. Dana: Yes, sir.

Mr. Hershey: Now, the Santa Fe System could handle the same amount of California traffic that it now handles if there was no such place as Texas, and they had no line through Texas and the eastern part of New Mexico?

Mr. Dana: Yes, sir.

Mr. Hershey: They have a line by which they have handled their traffic for a great many years and could now handle it without it going over the Panhandle & Santa Fe at all?

Mr. Dana: Yes, sir; that is the line by which their trans-continental passenger trains all move at the present time.

Mr. Hershey: The line via the Panhandle & Santa Fe was built because it afforded a lower grade line and cheaper operation and perhaps some less distance—I do not know about that.

Mr. Dana: The distance is very litle less. It was built, as I understand it, because it afforded an opportunity of getting a trans-continental line at a lower grade.

567 Mr. Hershey: And the Texas business from a traffic standpoint neither adds to nor takes away the ability of the Santa Fe System to handle this traffic via another route?

Mr. Dana: Not at all.

Mr. Hershey: Does not affect it one way or another?

Mr. Dana: Not at all.

Mr. Terry: I do not understand what was the proportion of the local business originating on the Panhandle & Santa Fe and ending on the Panhandle & Santa Fe, the total business in ton miles.

Mr. Dana: The total Texas intrastate business of the Panhandle & Santa Fe Railway, Judge, for the year ending June 30th, 1916, was 24.2 per cent of the total tons.

Mr. Terry: That is local*n* and interline both.

Mr. Dana: That is local and interline intrastate.

Mr. Terry: Have you got that separated when strictly local and state interline, that 22 per cent?

Mr. Dana: It is separated on the exhibits, but I did not make the percentage figures?

Mr. Terry: It is separated?

Mr. Dana: Yes, sir; it is separated upon the exhibits. My Exhibit O is next.

(The statement in question, so offered and identified was received in evidence and thereupon marked defendants' Exhibit O, Witness Dana, received in evidence May 18th, 1917, and is attached hereto.)

Mr. Dana: Exhibit O is just a further comparison of figures taken or included in those shown upon Exhibits N-1 and N-2, the overhead interstate business in this exhibit being segregated, and I want to say that while in this exhibit it shows over the 3 items mentioned at the left of the page that is to say, Higgins, Farwell, Sweetwater-Farwell to and from the Panhandle & Santa Fe, that really the strictly overhead business is contained in the first two
568 items, that is to say, Higgins-Farwell and Sweetwater-Farwell.

If this overhead traffic is deducted it will be found that the Panhandle & Santa Fe Railway for the fiscal year ending June 30th, 1916 earned upon all of its interstate traffic to and from Panhandle & Santa Fe stations an average of 5.06 mills per ton per mile, more than upon its interline intrastate traffic, an average of 3.29 mills per ton per mile, more than upon all of its total intrastate traffic. It seemed proper to withdraw Exhibits P-1 and P-2.

(No such exhibits were filed.)

Mr. Dana: The next exhibits which I will offer is Exhibit Q. Exhibit Q has, I am sorry to say, in some instances a map attached and in others not. I exhausted the supply of one book store, so that some of the exhibits will be short the map. However, it is simply a map of Texas.

(The statement and map in question, so offered, and identified were received in evidence and thereupon marked Defendants' Exhibit Q, Witness Dana, received in evidence May 18th, 1917, and are attached hereto.)

Mr. Dana: The justification for higher rates in differential territory is based, I believe, on the fact that within the zone so described the population per square mile or per mile of railroad is much smaller and the traffic far less dense than in the more thickly settled portions of the state in common point territory, and this exhibit prepared with this thought in mind is a comparison of the area, population and railway mileage in east Texas with that of west Texas, the boundary line in the first instance, that is, to and including page 7 of the Exhibit, having been fixed upon the basis of the densely and thickly settled counties of the state as shown in a shaded map which accompanied the report of census statistics of the Federal Census of 1910. This line is shown upon the attached map, where one is attached, in red outline.

569 Also the interstate common point differential line is shown in blue and the boundary line of the 47 Panhandle and South Plains counties in differential territory which are served very largely by the Panhandle & Santa Fe Railway are shown in green outline.

It will be noted the Federal Census line north of Gillespie County lines considerably to the east of the interstate common point differential line, thereby taking in several counties in common point territory and by so much, theoretically at least, making the comparison more favorable in point of population and so forth for the differential counties.

Mr. Terry: Is it true that you have in there with the Panhandle and South Plains country what Mr. Stinnett calls the Panhandle?

Mr. Dana: I think very nearly. I think Mr. Stinnett only included 45 counties.

Mr. Terry: How much have you?

Mr. Dana: 47.

Mr. Terry: Very much the same?

Mr. Dana: It is very similar. There are two counties in the southeastern portion of what we call the Panhandle and South Plains country that Mr. Palmer omitted which I included, because they really lie in differential territory.

Mr. Terry: What are those two counties if you can give the names?

Mr. Dana: Well, I think they were Kent and Stonewall—are they?

Mr. Stinnett: I think so.

Mr. Dana: They are in the extreme southeastern corner of the 47 counties that I have included.

Upon the basis of the statistics contained in the first seven cases of the Exhibit it will be noted that the population per mile of railway in West Texas territory as described in the exhibit was 221 in 1910 and 220 estimated as per formula B which is shown on the exhibit, at the present time, compared with east Texas

570 figures of 287 and 301, or as compared with the general average of 272 and 278.

The average population per mile of railway in West Texas in 1910 was 51 less than the general average for the state and at the present time is 58 less than the general average for the state.

Of course, this decrease in population per mile of railway in what is designated as west Texas in the first seven pages of the exhibit is due to the construction of new lines of railway within that territory, but the new lines have to have traffic to draw from.

Mr. Hershey: Do you call particular attention, Mr. Dana, to the population per square mile in that same territory versus east Texas?

Mr. Dana: The exhibit shows that the population per square mile in east Texas compared with west Texas and with the average for the entire state is as follows:

East Texas in 1910 30.4 per cent.

Mr. Hershey: Is that right?

Mr. Dana: 30.4 people per square mile.

1916, under formula B—and perhaps I ought to state that formula B simply takes the estimated increase of population for the entire state as of July 1st, 1915, which is shown in the estimated population of the state by the Federal Census, as 13.65 per cent increase and doubles that for the portion of Texas as we have shown it in this exhibit and upon the map; that is, we have used as our basis for that portion of the state line west of the red line on the map 27.3 per cent as the rate of increase instead of 13.65 per cent which is that of the entire state.

For west Texas in 1910 the population per square mile was 4.9 people and in 1916 under formula B 6.3 people. For the entire state the population in 1910 was 14.4 people and in 1916, 17.3 people.

571 Mr. Hershey: East Texas increased 4.2 per cent per square mile 1916 over 1910, whereas West Texas increased .7 of a person per square mile during the same period.

Mr. Dana: No; it is 1.4, is it not?

Mr. Hershey: 4.9 to 5.6. I am talking about your estimate in formula A.

Mr. Dana: The figures which I gave were on the basis of formula B. It shows an average of 1.4 people per square mile.

Mr. Hershey: And 4.2 in east Texas approximately?

Mr. Dana: Yes, sir.

Examiner Thurtell: This matter about what the increase is per square mile since 1910 to 1916, is not very certain, is it, as to what it is in the western half of the state? I see you have assumed apparently that the population of the whole state having increased a certain percentage that the population in west Texas has increased twice as much. Does anybody know that?

Mr. Dana: No, they do not, Mr. Examiner. I really think that if the territory which in the first seven pages of this exhibit I have designated west Texas—I question really whether the increase has been greater than the 27.3 per cent which I show, but, of course, nobody knows that for a fact.

Examiner Thurtell: No census has been taken since 1910?

Mr. Dana: No authentic census has been taken since 1910.

Mr. Stinnett: What did you designate as west Texas, the 47 counties?

Mr. Dana: Oh, no; Mr. Stinnett, I am going on the 47 counties

4699

in a minute. What I designate as West Texas in my statement as far as I have gone lies west of a line——

Mr. Fullbright: The differential line.

Mr. Dana: It includes more than the differential territory. It lies west of the line drawn, for instance, between Wilbarger and Wichita, Baylor and Archer, Throckmorton and Young, then includes Stephens and between Callahan and Eastland, Coleman and Brown, McCullough and San Saba, Mason and Llano, Blanco
572 and Hays, Kendall and Comal, at about which point it strikes the *the* interstate differential boundary line.

Mr. Hershey: Mr. Dana, referring to that question asked by Mr. Thurtell, you have used a basis for increase of the state as given by the United States Government, have you not?

Mr. Dana: Yes; as shown by the Federal Census Bureau for the State of Texas, July 1st, 1916.

Mr. Hershey: And the only *think* that was not furnished you by the Government was the division of the increase as between east and west Texas?

Examiner Thurtell: Mr. Hershey, the census makes an estimate every once in a while, but I do not know that that is anything very certain, is it?

Mr. Hershey: I do not think so, but I wanted to show this was the best information available, that is all.

Examiner Thurtell: Yes, but the matter of whether the increase had been twice as much in west Texas as in east Texas I do not think anyone could be sure about.

Mr. Hershey: That was the doubtful question in your mind?

Examiner Thurtell: Yes.

Mr. Hershey: Well, I think you are right about that.

Mr. Dana: Passing to page 8 of the exhibit I show therein the area, population and railway mileage in the Panhandle and South Plains Country as we have described it, that is, the 47 counties as compared with the balance of the State of Texas based upon the census of 1910 and the estimated census of the Federal Government as of July 1st, 1916.

Figuring my estimate in this statement I have used 40 per cent as the basis of the increase—that is, the average increase in these 47 counties, and from what knowledge of the territory I have I think that is fairly representative.

It will be noted even here that the population per square mile in these counties upon the basis of this estimate has increased only from 3.01 inhabitants to 4.42 as compared with 17.35 inhabitants
573 for the balance of the state in 1910 and 19.51 upon July 1st, 1916.

The population per mile of railroad has increased from 144 to 160; the population per mile in the balance of the state remaining, according to these figures, constant at 281.

It will be noted in the figures for the railway mileage of the state as shown in this exhibit there is a difference between that found by Mr. Waldo and myself. I think this is due to the fact that we have included in our mileage joint track, that is to say, where two lines

operated over the same piece of railway there was in point of fact but one railway, but we have shown that as two.

Now, it so happens that so far as I know there are no joint track arrangements in the 47 counties in the differential territory which I have shown here and to that extent I have really decreased—no; that is not true, because I have used the exact mileage insofar as I could figure it in the 47 counties, but it has decreased in the balance of the state because of this inclusion of this additional mileage the population per mile of line as compared with what would have been had I used for the entire state the figures of, I think, 15,270, if I remember rightly, as shown in Mr. Waldo's exhibit.

At the bottom of this exhibit is given some figures for what they are worth. It shows that on the basis of the estimate contained in this exhibit the population of the entire 47 Panhandle and South Plains counties is considerably less than that of Dallas and Tarrant counties. That is to say, while the area of Dallas and Tarrant counties combined is about 4.1 per cent of that of the Panhandle and South Plains country their population is 154.8 per cent of the Panhandle and South Plains Country.

Mr. Nickels: Mr. Dana, I would like to ask you a question or two about page 5 before you pass from that exhibit, to save going back to it.

Mr. Dana: Yes.

574 Mr. Nickels: Upon what basis do you apportion the population of east Texas as shown there between the roads shown.

Mr. Dana: That is the population per mile of road as it is shown there?

Mr. Nickels: No; the total population of each road. You show, for instance, 1,486,708 for the Missouri, Kansas & Texas for 1910.

Mr. Dana: Well, that, of course, as you can readily see from the totals given below, is really a duplication. That is to say, we had no way of knowing what particular population there was in each county near the Missouri, Kansas & Texas or the International & Great Northern or the Gulf Colorado & Santa Fe, so the population, you know, is taken for the entire county in each case through — the line ran.

Mr. Nickels: What would you say in the case of a county penetrated by six of the seven roads, like Harris County.

Mr. Dana: I expect there would be that same duplication, if I correctly understand the way in which the Exhibit was prepared.

Mr. Nickels: I want to bring out the point, if it was a fact, and I so understood it, that the figures you show there for each of these roads do not indicate at all that that many people live along the line of the particular road.

Mr. Dana: No.

Examiner Thurtell: They do not mean very much.

Mr. Dana: I do not think myself that this particular page of the exhibit means anything at all. It was really prepared for another case.

Mr. Nickels: I thought I understood it right, but I wanted to get it in the record.

Mr. Dana: Yes.

There is one thing in connection with this exhibit that I really ought to mention. I know Mr. Palmer pretty well, and I know that he never tells anything but what he believes to be the truth, and the figures of population he presented he obtained, of course, from the best source he could at the time, the county clerks, and if I had thought of it that is where I would have gone to get mine, but to show, at least, as it seems to me, just how far afield some of these estimates of county clerks may be, I want to say that during an interim in this hearing I happened to be at home. I discovered they had just completed a scholastic census of Potter County. Now, I do not know that a scholastic census is a particular accurate way to arrive at any given city or county, but certainly I believe it to be more accurate than what appears to me to be a guess made by county officials.

The scholastic census of Potter County, including children from 7 to 17 years of age inclusive recently completed and the figures of which were obtained from the county judge of the county showed the following.

Amarillo independent district, whites, 2,279, and including a few negro and Mexican children, 2.335. For the balance of the county the census showed white children as of school age numbering 129 and the Judge said that they had not been able to secure the record of the Mexicans, but that he thought it was about 43.

That would make the outside of the City of Amarillo independent district 172.

The 1910 figures as furnished by the county clerk, and I am speaking now of the 1910 scholastic figures was for the Amarillo independent district all races 1,829, the balance of the county all races 132, a total of 1,961.

The Federal Census of 1910 gave the total population of Potter County as follows:

Precinct Number 1, which includes the city of Amarillo, but is, as I understand it, somewhat larger than the Amarillo independent school district—is that correct, Mr. Stinnett?

Mr. Stinnett: Precinct Number 1?

Mr. Dana: Precinct Number 1 is larger than the independent school district, is it not?

Mr. Stinnett: Well, I think so.

Mr. Dana: That is my understanding. Precinct Number 1 including the City of Amarillo, 11,822, balance of county 602, or a total of 12,424 inhabitants for the entire county.

Now, using the census figures for 1910 in conjunction with the scholastic census of the same year the Amarillo independent school district lying solely within the boundaries of precinct Number 1 as prescribed by the Federal Census it will be found the total number of inhabitants as compared with the children of school age were in the following ratios; Amarillo independent district, 6,464 to 1, balance of County 4.56 to 1.

Assuming that this same proportion of children of school age to

the inhabitans of the county as a whole to hold food in 1916, then the present population of Potter County would be as follows:

Amarillo independent district 15,093, balance of county 784, or a total of 15,877 inhabitants as compared with the county clerk's estimate of 25,000.

Mr. Stinnett: What does the federal census estimated report indicate on Amarillo and Potter County, issued last June or July, the same thing you used for your basis.

Mr. Dana: I think the federal census accorded to Amarillo based upon its percentages of increase a population in the city alone of something over 17,000 people.

Mr. Stinnett: I saw the same census; it was 19,200, I think.

Mr. Dana: Well, I do not remember ever having seen that, but I did see 17,300 and something, I believe, Amarillo claims.

Mr. Stinnett: In December, the Government issued another estimate, published—you saw it, perhaps—showing 19,000 and something.

577 Mr. Dana: My next exhibit is R.

Mr. Terry: Before you leave the last exhibit, on page 8, you are comparing 47 counties in the Panhandle South Plains Country. Do you include on that page in the balance of the state all of west Texas except that part of west Texas which is included in the 47 counties?

Mr. Dana: Yes, sir.

Mr. Terry: I understood you to say you had estimated the increase of population somewhere at 40 per cent. Where was that?

Mr. Dana: That was incorrect, Judge, and I am glad you mentioned it, because otherwise the record would not have been in line with the real facts. You will notice at the top of the second set of figures on page 8 is shown the federal estimated census of July 1st, 1916. The figure shown thereunder is taken from the estimated census as furnished us by the Government as of July 1st, 1916, for the 47 counties in the Panhandle and South Plains Country.

I got astray on my 40 per cent proposition, because before I got hold of those figures I thought 40 per cent would represent a fair increase in that country.

Mr. Terry: But, in your figures you have taken the figures of the census bureau as their estimate?

Mr. Dana: Yes, sir, their estimate.

Exhibit R relates to the old merchandise class rates; that is, those that were in effect prior to November 1st, 1916, as compared with the new, those which became effective intrastate in Texas November 1st, 1916, and between Shreveport and Texas points, with the proposed or suspended rates from Wichita, Kansas, as carried in Leland's suspended tariff Number 42-N, I. C. C. 1178, and Oklahoma City, Oklahoma City carried in Suspended supplement Number 60 to Leland's Tariff Number 26-T, I. C. C. No. 1048, the latter rates—that is, rates which we have used from Wichita and Oklahoma City—being based upon the rates between Shreveport and points in Texas.

578 (The statement in question, consisting of eight pages, so offered and identified was received in evidence and thereupon marked Defendants' Exhibit Number R, Witness Dana, received in evidence May 18th, 1917, and is attached hereto.)

Mr. Dana: The points of origin are those which Amarillo, Lubbock and other Panhandle and west Texas distributors and jobbers state are their competitors and the 13 points of destination upon the Panhandle & Santa Fe Railway were selected as characteristic of the territory and of the varying distances from the different jobbing centers.

Whether Amarillo, Lubbock or any other jobbing point on the Panhandle & Santa Fe has been benefited or injured by the merchandise rates as carried in the tariffs indicated as compared with the rates from Amarillo in effect may be determined by noting from the exhibit whether the merchandise rates from these points to the characteristic destinations have received a greater or less increase in cents per hundred pounds on the merchandise rates from Wichita, Oklahoma City, Dallas and Galveston to the same destinations.

Considering each class rate to each of the 13 destinations as a unit, making 52 rates, if you please, in all, it will be found Amarillo, as compared with Wichita, has gained in 45 instances, lost, though in a much less degree, in six instances, and shows no change in one.

Amarillo's showing as compared with Dallas is gained in 39 instances, lost in 11 instances, and no change in two, and as compared with Galveston, Gained in 41 instances, lost in 10 and suffered no change in one.

The comparison with Oklahoma City shows a gain in 43, a loss in 9 instances.

Lubbock, which I think ranks next to Amarillo as a jobber in the Panhandle South Plains country, has benefited as much, if not more, by the advances made or proposed, and I believe what
579 is true of these two points is true of every other point on the Panhandle and Santa Fe Railroad, and that within their natural distributing territories the jobbing centers upon the Panhandle & Santa Fe Railway in West Texas are, or will be, under the new or proposed rates, in a much better position to compete with such points as Wichita, Oklahoma City, Dallas, Galveston, et ceteras, than before.

Since this exhibit was prepared the question of the rates as between Quanah in one instance and Sweetwater in the other, versus Amarillo has been raised, and I have, since coming here, made some comparison of the rates from these points to the 13 destinations in the same manner as they are made in the exhibit itself.

Taking Sweetwater, for instance, and considering in the same way each class rate to each of the 13 destinations as a unit; it will be found Amarillo as compared with Sweetwater has gained in 21 instances suffered no change in three and lost in 21; that Lubbock, which I regard as the natural competitor of Sweetwater, other than Amarillo,

has gained in 41 instances, suffered no change in four and lost in seven instances.

I am not so familiar, naturally, with the line of the Fort Worth & Denver, but I have selected as a comparison Quanah versus Amarillo, destinations of Hedley, Clarendon, Goodnight, Claude and Washburn. I think those five stations are fairly characteristic of the territory lying between Quanah and Amarillo.

Taking Hedley, for instance, which is 72.1 miles from Quanah and 70 miles from Amarillo—in other words, just about equidistant from each point,—the difference in the rates Quanah over Amarillo under the old rate—that is, the Railroad Commission of Texas class tariff Number 3 rates—was one cent per hundred pounds for each one of the four classes. Under the new rates, the difference Quanah over Amarillo is first class, 4 cents, second class 3 cents, third class 3 cents, fourth class 2 cents.

580 To the five destinations, or the 20 rates, Amarillo has gained in every instance except two, one of which latter is a reduction in the difference of the fourth class rate Quanah over Amarillo to Washburn from 33 to 31 cents, fourth class rate Quanah over Amarillo to Claude, in which case it remains the same, namely, 26 cents.

Mr. Stinnett: Mr. Dana, while you are on the subject, just one question.

Do you think fourth class rate would be a fair illustration of Quanah and Amarilo from a jobbing standpoint, considering you must job on a basis of carload inbound movement, which would be either carload class or commodity rate, and mainly commodity?

Mr. Dana: Well, this is a comparison of class rates, Mr. Stinnett, and takes in not only fourth class, but takes in first, second and third. In other words it is the class rates under which the jobbers at various points job their merchandise.

Mr. Stinnett: I understand, but I do not think that is a fair illustration at all, because it is the carload inbound rate that makes the basis for comparison. The jobber does not lay in goods in classes in less than carload shipments as the basis for his outbound distribution.

Mr. Dana: Well, if I understand the matter correctly, the Interstate Commerce Commission and the Supreme Court have ruled that no consideration should be given to the question of inbound rates, either class or commodity.

Mr. Stedman: Of any place, you mean?

Mr. Dana: Any place in the country.

Mr. Stedman: That had relation to Shreveport, on account of certain supposed natural advantages, is not that correct?

Mr. Dana: Well, I think they have ruled that same way, Judge, in other instances.

Mr. Stinnett: Well, if you are going to make a comparison as to the relative status of those places, you should take up the classes and then the carload classes and commodities all the way
581 through? You could not well take one and leave out the important factor out of the whole business?

Mr. Dana: Well, I do not really see that that is material in a discussion of the class rates, but if it were so, as a matter of fact, Amarillo is accorded, on practically all of the commodities which move into Amarillo from defined territories, the same basis of inbound carload rates as obtains to Quanah, Texas.

Examiner Thurtell: Was not this the case? Maybe I did not quite understand that exhibit, but this is what I thought it meant.

Take for instance, Quanah and Amarillo, both trying to distribute articles to a certain point in Texas.

Mr. Stinnett: Yes.

Examiner Thurtell: He has been trying to show how the relationship between them has been changed. Now, naturally, the inbound rate to Quanah and the inbound rate to Amarillo remains just exactly what it was from an interstate point and it is only this matter of distribution, irrespective of whether or not the Interstate Commerce Commission must consider it or not. That is, let us think of it in that way. Here is the article at each one of those two places, and they are seeking to distribute, one against the other. He used Oklahoma City and Wichita. Now, he did not say anything about the rate into Oklahoma City or into Wichita. We will assume that has not been changed. Neither has the interstate rate into Amarillo been changed, and he is trying to show how the distribution business has not been affected by this change.

Was not that what you intended to show?

Mr. Stinnett: Yes, but the intrastate commodity rate has been changed to Amarillo, bit it has not been changed to Quanah. It has not been changed to Quanah and it has to Amarillo, and that is the point I am trying tp make. There has been no change in the
582 relative interstate rates between Quanah and Amarillo and Sweetwater and Amarillo, but there has been in all of the intrastate carload classes and commodities.

Examiner Thurtell: Well, he was only trying to show what has happened on the less than carload commodities.

Mr. Stinnett: I understand that, but that would not illustrate the advantage as to distribution from the jobbers' standpoint.

Examiner Thurtell: Oh, I see what you are thinking of, and that is this: That the article might come in on a carload rate.

Mr. Stinnett: That is it.

Examiner Thurtell: From points in the state.

Mr. Steadman: From Texas, from Fort Worth and Galveston.

Examiner Thurtell: They might come in.

Mr. Stinnett: All that southern tier of counties from which Amarillo derives such a large part of its supplies.

Examiner Thurtell: And what you mean is it would take a study, not only of what these distributing rates are on less than carload, but what those rates are on the intrastate carload traffic, in?

Mr. Stinnett: That is the idea.

Examiner Thurtell: There are such articles that are distributed, I suppose?

Mr. Stinnett: There are.

Mr. Hershey: Mr. Dana, what articles are distributed and jobbed

from Amarillo that are produced and shipped to Amarillo from points within the State of Texas?

Mr. Dana: Well, I suppose, Mr. Hershey, that Mr. Bryant, who is a wholesale jobber of fruits and vegetables, et ceters, probably secured some of his early shipments of onions and potatoes particularly, from southern Texas?

Mr. Hershey: And cabbage?

Mr. Dana: And cabbage, too, yes. The other distributors—that is to say, the wholesale grocers, and the wholesale hardware people, if they obtain anything in Texas I am rather inclined to believe it is not Texas originated traffic, but is other traffic moving
583 through the ports, at Texas City or Galveston, or some other seaboard point.

Mr. Hershey: With the exception of onions and cabbage and potatoes?

Examiner Thurtell: And rice and watermelons?

Mr. Stinnett: And sugar.

Mr. Terry: Sugar, they might sugar.

Mr. Hershey: And the green stuff, in its particular season, for a very brief period.

Mr. Stinnett: Peaches and berries, carloads.

Mr. Hershey: Some peaches and berries.

Mr. Stinnett: Cabbage from Brownsville.

Mr. Dana: You have mentioned cabbage, but I am rather inclined to doubt about the movement of peaches and berries.

Mr. Hershey: The principle stuff that is distributed comes from beyond the state.

Mr. Dana: That is true, and I may say that I have received a statement from the foreign freight agent of the Gulf, Colorado & Santa Fe at Galveston, which I think shows—Mr. Hershey can correct me—which shows Texas City and Galveston, though I am not certain about Texas City—which shows the inbound traffic, or coastwise traffic; that is traffic originating at the Atlantic Seaboard ports, and coming in through Galveston, for each month. I would say—of course, I do not know what the Fort Worth & Denver City or Rock Island handle into Amarillo from Galveston or from Texas points, but so far as the Panhandle & Santa Fe Railway is concerned I will venture to say that the total carload movement to Amarillo from Galveston coming in by vessels to that port will not amount to 20 cars per year out of the total inbound.

Mr. Hershey: And for a number of years a good deal of that traffic has moved billed from Galveston and Texas City?

Mr. Dana: I so understand.

584 Mr. Hershey: Whereas, effective April 20th, a new tariff became effective in connection with the Morgan Line and the Mallory Line, which provides for through rates no higher than the combination of locals on Galveston now.

Mr. Dana: That is my understanding.

Mr. Hershey: So thereafter, there will be no advantage in billing from Galveston?

Mr. Dana: No.

Mr. Stinnett: Well, there are two other lines bringing in the same class of stuff to Amarillo, the Fort Worth & Denver City and the Rock Island.

Mr. Dana: I said, Mr. Stinnett, I did not know what the Fort Worth & Denver and the Rock Island brought in.

Mr. Stinnett: Well, you were comparing the Quanah conditions on the Fort Worth & Denver with the——

Mr. Dana: But I was simply making that statement as illustrative, in so far as my information went, of the volume of the business moving to Amarillo through the port of Galveston.

Mr. Stinnett: Well, in view of that fact, your basis for an illustration would not be a very good one on the jobbing advantage of the two towns, Quanah and Amarillo?

Mr. Dana: Well, I am willing to leave that to somebody else besides you and me to decide.

Mr. Stedman: Mr. Dana, while we are on that subject, to make this point clear right here, effective in April, I believe, Mr. Hershey said, there is a new tariff put in covering business through Galveston, your coastwise business, on combination of locals.

Mr. Dana: Well, it names a through rate.

Mr. Stedman: I understand, a through rate, but that is practically or actually the combination of locals, is it not, the water rate plus the rail rate?

Mr. Hershey: It does not exceed that.

Mr. Stedman: Is it not actually that?

585 Mr. Hershey: No, it is not actually that; that is a maximum.

Mr. Stedman: Well, have you an uncertain rate there? What is the rate, then?

Mr. Hershey: The rate is built with differential relation to St. Louis, except that these Galveston rates are maximum, Galveston combination.

Mr. Stedman: Not affected by the combination of local rates in Texas, 2-B rates?

Mr. Hershey: Oh, yes.

Mr. Stinnett: They are to Amarillo.

Examiner McFarland: Mr. Dana, are the rates from Oklahoma to points in the Panhandle on the mileage scale basis proposed rates.

Mr. Dana: They are until you reach the group rates. Now, I think from Kansas they are really—I really do not know; they are specific rates or mileage rates, but from Oklahoma they are on a mileage scale until you reach into a group basis, which really makes a lower rate than the mileage scale would if that were used.

Examiner McFarland: Those rates also apply to eastern Texas, do they not?

Mr. Dana: I believe they do, yes.

Examiner McFarland: What I was getting at was this: Is there any differential added to those rates to points in the Panhandle territory as against points in eastern Texas?

Mr. Dana: Yes; the new rates or proposed rates which are sus-

ended from Wichita, Kansas, and from Oklahoma City, are made by using a differential for the movement in differential territory.

The next exhibit which I will submit is described as Exhibit S.

586 (The statement in question, consisting of one page, so offered and identified was received in evidence and thereupon marked Defendants' Exhibit "S," received in evidence May 18th, 1917, and is attached hereto.)

Mr. Dana: Exhibit S was prepared by our auditing department at the request of the Railroad Commission of Texas through the traffic department of the Amarillo Board of City Development, and is a statement of intrastate traffic received at and forwarded from Amarillo beyond the Panhandle & Santa Fe Railway during the four months, November and December, 1916, and January and February, 1917, showing revenue accruing under rates in Texas Lines' Tariff 2-B, I. C. C. 33, as compared with that accruing upon the same commodities and tonnage under rates in effect prior to November 1st, 1916.

This exhibit shows an increase in revenue—that is, an average increase in revenue of 23.93 per cent.

This, as I see it, is considerable above of what would be the average percentage of increase were the line of the Panhandle & Santa Fe Railroad as a whole taken into consideration. That is, it will be noted upon this exhibit that $7,065.72 of the total increase of $9,393.37 lies in merchandise or less than carload business.

Now, since in the exhibit both the received and forwarded merchandise tonnage has been included, the forwarded business covering, I suppose, intrastate traffic, moving almost entirely to Panhandle & Santa Fe Railway destinations, it follows that there is in this merchandise business, or that there has been taken in this merchandise business, a double credit, if you please—that is, the percentage of merchandise business as shown upon this statement is much larger than is really the case, taking the business of the railway as a whole, since the rate of increase upon the merchandise is, as I figure it, 34.4 per cent, and it naturally follows that it has increased the
587 average percentage of increase for at Amarillo, and I presume other points in the state, of the possibility of existing or continuing in business under the schedule of rates provided in the tariff in competition with competitive jobbing centers in adjoining states, or in the case of west Texas jobbers, with their competitors from Texas common point territory.

It has already been shown in Exhibit R that the changes there made or proposed will redound, at least, so far as the outbound rates are concerned, to the benefit of Amarillo, Lubbock and other west Texas distributing points.

It has also seemed proper in this connection to have our auditor prepare exhibits T-1 and T-2 showing the intrastate and interstate tonnage segregated as to various commodities, as well as between various classes of business, forwarded from Amarillo during the four months November and December, 1916, and January and February,

1917, on which the advanced rates under the Shreveport case were in effect as compared with the corresponding months of the previous year, in which latter period the rates of the Texas Commission were operative.

It will be noted the total merchandise tonnage handled by the Panhandle & Santa Fe decreased during the 1916-1917 period as compared with 1915-1916, to intrastate destinations 58,259 pounds, while to interstate destinations it increased 436,053 pounds.

The latter is included not because it has any particular bearing upon this case, but simply to show that the Amarillo jobbers are extending their territory.

The decrease in forwarded tonnage from Amarillo is much more than accounted for by that which, since November 1st, 1916, has moved particularly to short haul destinations, either by express or motor truck. The motor trucks, operating on the right of way and road bed furnished free, with no responsibility covering possible loss or damage, are making store door deliveries at about the rates
588 charged by the *the* entire traffic moving or covered by the exhibit.

Mr. Nickels: Right there, Mr. Dana, you include live stock, the revenue on which accrued under the Texas Commission rates, and not under 2-B rates, did you not?

Mr. Dana: You will note, Mr. Nickels, that the revenue upon the live stock has been shown exactly the same, both under the old and the new rates. We just included that because that was a part of the tonnage of the station.

Mr. Nickels: It would affect the average increase.

Mr. Dana: Why sure, it would, but in showing the percentage of increase at any point, you are not going to exclude a part of the business.

Mr. Nickels: Well, it is not listed under 2-B. I thought I would call your attention to it.

Mr. Stinnett: Another question, Mr. Dana. Miscellaneous commodities. Does this embody only such items as were advanced by 2-B?

Mr. Dana: No; this covers all of the traffic that moved during that period.

Mr. Stinnett: All of the items, even though they were not affected?

Mr. Dana: Yes, sir; everything. It includes all the forward or received business at Amarillo during the period named.

Mr. Hershey: That exhibit was made in the manner which you were requested to make it by the Texas Railroad Commission, was it not?

Mr. Dana: Yes.

My next and last exhibit is, or I suppose are T-1 and T-2.

(The exhibits in question, so offered and identified was received in evidence and thereupon marked Defendants' Exhibit No. T. Witness Dana, received in evidence May 18th, 1917, and is attached hereto.)

Mr. Dana: When the rates as set forth in Texas Lines' Tariff 2-B, first became effective, a great deal was said — carriers for de-
589 liveries at their stations.

One truck, and I think there is but one, is operating regularly between Amarillo and points on the Panhandle & Santa Fe Railway. The decrease in all rail business to those points November 1st, 1916, to February 28th, 1917, inclusive, as compared with the same months of the previous year, was 284,173 pounds, from which it is, I believe, clearly evidenced that taking the business of the Amarillo jobbers as a whole, the tonnage movement during the period in question has increased considerably.

Mr. Hershey: Mr. Dana, please point out before you go any further where on your exhibit is shown that decrease to intrastate destinations of 58,259, an- increase to interstate destinations of 456,-000?

Mr. Dana: Well, there are two statements, Mr. Hershey; one covers the intrastate and the other the interstate

Mr. Hershey: Yes, I beg your pardon. I have it.

Mr. Dana: Notwithstanding the expres- and motor truck competition, it will be noted the all rail intrastate forwarded business for the Panhandle & Santa Fe Railway on the wholesale groceries, the wholesale hardware and transfer and storage companies at Amarillo increased during the 1916-17 period as compared with that of 1915-16 on the merchandise or less than carload business forwarded from Lubbock, which, as I have said, ranks second in importance to Amarillo as a jobbing center on the Panhandle & Santa Fe Railway, increased from 2,359,561 pounds during the months of November and December, 1915, and January and February, 1916, to 2,469,173 pounds during the corresponding months of 1916-17.

This increase, I might add, was in the *fact* of considerable express and motor truck competition, not nearly so wid-ly extended in former years as during the period since the 2-B rates have been in effect.

Mr. Stinnett: Mr. Dana, do you consider that increase due to Tariff 2-B?
590 Mr. Dana: Oh, no.

Mr. Stinnett: Well, is it not a fact that that country has been settling very rapidly the last year, a big influx of people at Lubbock and Amarillo and all of those places?

Mr. Dana: A considerable increase in population, Mr. Stinnett. The Panhandle & Santa Fe Railway serves this territory so far as the movement of rail traffic from Amarillo to Lubbock is concerned, exclusively. Its mileage was the same in 1915-16 as in 1916-17, so that the Amarillo and Lubbock merchants were, during both periods under the same necessity of using our rails, except in the instances where they choose to ship by express or motor truck.

It follows, therefore, that a comparison of the volume of forward traffic, during, before and after the period with respect to the ad-

vanced rates ought to show what effect, if any, the advanced rates have had upon the business.

That is all.

Examiner Thurtell: Any cross-examination?

Mr. Kayser: Mr. Examiner, just before we start the cross-examination, I want to get one thing straight. I noticed these exhibits here are multigraphed, principally, or made in such manner that a number of copies can easily be made. Now, we have followed this case from the beginning of it, and this is the second carrier that has made no attempt to give us a copy of the exhibits. We filed an intervention not only for ourselves, the City of Houston, but others, and I cannot possibly follow the case without having copies of these exhibits.

It seems to me that where they are made as these exhibits have been, it is just neglect that we are not supplied with copies, and we would like to be understood from now on whether or not we are going to get them.

Mr. Terry: We have understood in this case Judge Cowan and Judge Stedman represented the shippers and we have been furnishing them copies of these exhibits, and Mr. Nickels represent-
591 ing the state. Of course, there are numerous interventions here of individuals and parties, but we thought they were all represented generally, co-operatively. When this hearing came on, it was requested by Mr. Maxwell, or somebody, to give *than* an adjournment for half a day to give them an opportunity to get together and present their case. We supposed everybody on that side was together, except where they differed about these mileage scales they put in.

Mr. Kayser: Well, I have followed the case ever since I have been in it.

Examiner Thurtell: I know you have, Mr. Kayser, and I am very sorry they have not been able to give you copies of the exhibits.

Mr. Terry: And I will say my recollection is Mr. Kayser has not been here attending this hearing regularly.

Mr. Kayser: I missed two days.

Mr. Terry: We supposed when we furnished a complete set to Judge Cowan, Judge Stedman and Mr. Nickels it would be sufficient and I think we have been furnishing three copies on that side of the house.

Examiner Thurtell: I cannot ask one side to furnish a greater number than the other side has furnished.

Mr. Kayser: We have furnished 20 and 30 copies.

Examiner Thurtell: I know you have.

Mr. Terry: Very often we only get two copies of their exhibits and never more than three.

Examiner Thurtell: These exhibits are particularly interesting and if Mr. Kayser could be furnished copies of them, I am sure he would appreciate it.

Is it possible to do that without too much labor, Mr. Dana?

Mr. Dana: I really cannot tell until I return to Amarillo. It is true these exhibits were mimeographed in many instances, and hectographed in others, but unfortunately, as you see, there were a number of errors found in them after arriving at Dallas, so that I have had to make corrections, and in making those corrections I
592 secured the services of some stenographer, or somebody, and in so far as those corrections are concerned, we only had just the number of exhibits that have been distributed here today.

Examiner Thurtell: Well, were those corrections serious, Mr. Dana? Would not Mr. Kayser be able to follow them? Suppose you give him a set of the exhibits so he can follow them, and do that subject to corrections. He would probably be able to follow your plan.

Mr. Dana: I have not any more here.

Mr. Kayser: Can you furnish them when you return to Amarillo?

Mr. Dana: When I return to Amarillo I shall be very glad if I find a sufficient supply there without going to work of copying them over again, to furnish anybody with a copy who needs it.

Mr. Kayser: In regard to Judge Terry saying I have not been here, there has been a representative of Houston here every day of the hearing.

Mr. Terry: We did not understand that we were to furnish copies to every city that is intervening in the case; you have that privilege, but if we have to furnish a complete set to you we would have to furnish everybody a complete set.

Mr. Kayser: I think you can furnish me one without there being any great discrimination in it.

Mr. Terry: Possibly so.

Mr. Dana: As representative of the Panhandle & Santa Fe Railway I have sat around here at this hearing without getting any exhibits at all.

Examiner Thurtell: Mr. Kayser, I must say that you are the only person who has furnished enough copies to distribute pretty generally, and no other intervener did, that I know of.

Mr. Potts: I had 25.

Examiner Thurtell: I beg your pardon: I will include you, Mr. Potts.

593 Cross-examination:

Mr. Stedman: Mr. Dana, the Pecos & Northern Texas or the Panhandle & Santa Fe, reaches the New Mexico line at Farwell, that being the border between Texas, the border town in Texas and the border town in New Mexico being Texico?

Mr. Dana: That is correct.

Mr. Stedman: Is it not true that you can ship from Amarillo to Texico, New Mexico, cheaper than you can, all classes, to Farwell.

Mr. Dana: That is quite true at the present time, Judge, the rates into New Mexico were held down under the——

Mr. Stedman: They are not under the suspension now, are they. You spoke of Amarillo——

Mr. Dana (interrupting): Well, will you just let me make a complete statement on that situation?

Mr. Stedman: Certainly, sir.

Mr. Dana: The rates into New Mexico from Amarillo were held down by the old rates of the Texas Commission. As we left the Texas-New Mexico state line, and went west, we graded them up just as rapidly as we could, but of course we could not, at a point which is practically the same as is Texico, Farwell, get away from the Texas Commission rate, though those rates were, in instances, prior to November 1, 1916, practically to Farwell and to Texico both on the same basis. I do not know whether they were exactly or not.

Since November 1, 1916, we have had in course of preparation a revision of our rates to New Mexico, not onl yfrom Amarillo and Lubbock, but also from Fort Worth and Dallas, etc., bringing them up to the basis of the full differential-Shreveport scale, and if I ever get a chance to go to Chicago and consult with the officials of the Atchison, Topeka & Santa Fe Railway so that a conclusion may be reached, those tariffs will be submitted to the Interstate Commerce Commission.

504 Mr. Stedman: That evidently contemplates a good many intermediate steps, does it not, several steps to be taken?

Mr. Dana: Just what do you mean by intermediate steps?

Mr. Stedman: Well, you have to do several things; you have to go to Chicago, and you have to consult with somebody, and you have got to submit to somebody before the thing would be started.

Mr. Dana: No; I would not say submitted. The Atchison, Topeka & Santa Fe is interested in the rates in New Mexico just as the Panhandle & Santa Fe is interested in them in Texas. We naturally have to come together on the proposition. The rates which we propose to establish, however, have already been prepared, and it really will not take but a day or two to go over them with the officials of the Atchison, Topeka & Santa Fe, and put them in shape to file with the Commission.

Mr. Stedman: Now, rates applying locally between Amarillo and Farwell can be adjusted by your line without the cooperation of anybody else, can they not? I mean to say, they are wholly Texas rates? They are wholly intrastate rates?

Mr. Dana: That is true, they are wholly Texas or intrastate rates, yes.

Mr. Terry: Well, the 2-B rates are in effect to Farwell.

Mr. Stedman: Well, that is so, but Texico is across the line, and you would have to go across the line; that is right. You use the same depot there, do you not?

Mr. Dana: Yes, sir; that is correct.

Mr. Terry: We made an agreement with the Texas Commission, Mr. Stedman, that the depot would be on both sides of the line, to avoid having two depots, so you can ship to either point on these 2-B rates; you can get your delivery at either place.

Mr. Stedman: Yes; but when you have a bill of lading and are shipping from Amarillo to Farwell, it has got to read Farwell, a man doing business on the Texas side?

Mr. Dana: Yes, sir; but it is delivered at exactly the same
595 station as if it were billed to Texico.

Mr. Stedman: Well, do you mean the same rates apply to Farwell as to Texico?

Mr. Dana: I mean to say if any shipper at Amarillo bills his freight to Farwell it will be delivered at the freight station which serves both Texico and Farwell at the Amarillo-Farwell rate.

Mr. Stedman: Well, but at the 2-B rates, the Texas rates, or the Texico rates?

Mr. Dana: Well, if he bills it to Farwell, it will probably get 2-B rates. If he bills it to Texico, he will get the other rate. As a matter of fact, I expect he bills it to Texico.

Mr. Stedman: Now, the same situation exists on the Rock Island Road, does it not, down at Texhoma? There is a town called Texhoma, part of which is in Oklahoma and part of which is in Texas, and the same condition exists, does it not? That is, you can ship more cheaply from Amarillo to Texhoma-Oklahoma, than you can to Texhoma, Texas?

Mr. Dana: I could not say, Judge.

Mr. Stedman: You do not know about that?

Mr. Dana: I have not been up there long enough to——

Mr. Stedman (interrupting): Well, from your knowledge of the situation, do you not know that to be the condition.

Mr. Dana: No, I do not. I could not say. I would not make a statement about that.

Mr. Stedman: Very well.

You say you have a very good grade line from Higgins to Farwell?

Mr. Dana: Yes sir.

Mr. Stedman: What per cent is that, do you know?

Mr. Dana: No, I do not.

Mr. Stedman: I know you have a good road.

Now, what sort of a grade line have you from Farwell to Coleman? You have what is called the Coleman Cutoff, running from—where is that?

Mr. Dana: Coleman Cutoff runs from Coleman through
596 Sweetwater, Slaydon and Lubbock to Farwell.

Mr. Stedman: Does that take in the Texico-Lubbock Cutoff? There is a little line in there about 79 or 80 miles long called the Texico-Lubbock Cutoff.

Mr. Dana: Yes.

Mr. Stedman: Is that embraced in the Coleman Cutoff?

Mr. Dana: Yes, sir.

Mr. Stedman: What sort of grade line is that?

Mr. Dana: Well, that particular part you mention is upon a pretty good grade. There are some heavier grades than exist on the main line from Higgins to Farwell upon the Coleman Cutoff.

Mr. Stedman: Now, if some of these other lines operating in differential territory did as much work on their roads as the Santa Fe System has, they would have better grades, would they not?

Mr. Dana: Well, they ought to start in with the trans-continental

tonnage that the Santa Fe System has; I should say give them something to work upon.

Mr. Stedman: Did I understand you to say that the intrastate business of the Panhandle & Santa Fe comprised about 24 per cent of your tonnage, the total tonnage of your road?

Mr. Dana: I think it was approximately 24 per cent of the tonnage. That is correct, 24.2 per cent of the total tons.

Mr. Stedman: Well, now, that is a very large business, when you consider the tonnage of that line, is it not? Is not that a large business?

Mr. Dana: Why, I could not say that 24.2 per cent of 100 per cent was very large.

Mr. Stedman: Does not that line have a business of about 820,000 tons per mile of line, or did it not have in 1916, a density of that much?

Mr. Dana: Well, I would have to sit down here and figure it out; it is all contained in these two exhibits.

Mr. Stedman: I think that is contained in there, so you
507 need not take time to investigate that.

You have made a division of Texas for your purposes into what you designate as east Texas and west Texas, separated by the line that you have indicated in one of your exhibits.

Mr. Dana: Yes, sir; following what would be shown in the shaded map of the Census Bureau at Washington.

Mr. Stedman: I did not see the map.

Mr. Dana: As the thickly and thinly settled counties of the state.

Mr. Stedman: Now, there is a very distinct territory from that that is universally known in Texas as east Texas, taking the country beginning at the Louisiana line and coming up here half way to Dallas or more? Is not that country that is generally known as east Texas?

Mr. Dana: I have not been a Texan long enough to know, Judge.

Mr. Stedman: Well, I was born down there; I ought to know something about that country. Have you ever heard of that country as east Texas, the pine woods country down there?

Mr. Dana: I have heard of east Texas, but I did not know just what particular portion of Texas was referred to.

Mr. Stedman: You never heard of it as you have designated it here?

Mr. Dana: No; I think you are quite correct, that what I have taken from the official census as east and west Texas is not probably what you or any other citizen of the state would say was east and west Texas.

Mr. Stedman: Now, you have drawn a line separating east Texas from west Texas, and you have shown the separage population in the western territory and the denser population on east of there. Now, if you were to draw another line beginning where your western territory line begins and run that eastward, say 100 miles out of Dallas, you would take in a very densely populated country

would you not? Suppose you began where the eastern boundary of your west Texas is established by you, and run to a line, say, for 100 miles east of Dallas, you would take in a very densely populated country?

598 Mr. Dana: Well, now, wait a minute. Supposing I began at the eastern boundary of the west Texas line.

Mr. Stedman: Yes.

Mr. Dana: And then go east from that to where?

Mr. Stedman: To a line, say, 100 miles east of Dallas, drawn north and south through the state.

Mr. Dana: Well, I believe it has been stated that over one-half of the population of Texas is within 100 miles of Dallas.

Mr. Stedman: Yes; and I have named a very much larger territory than that.

Mr. Dana: Well, it is certainly more thickly settled than the portion west of that line, but I do not know.

Mr. Stedman: Yes. Now, what I was getting at was this, If you draw that line, say 100 miles east of Dallas, and then you draw another line which ran to the eastern border of Texas, or the Louisiana line, would you not find then a territory as large as any one of a number of different states, and larger than any one of a number of different states, that is rather sparsely settled country?

Mr. Dana: Well, I could not say.

Mr. Stedman: You could not say about that?

Mr. Dana: No, I am not familiar enough with the State.

Mr. Terry: Judge, what that country lacks over there in population makes up in politics.

Mr. Stedman: We used to have it, but it has gone to Dallas and Fort Worth now.

Well, if you do not know that is all right.

You made some comparison, Mr. Dana, between Quanah and Amarillo on the first 4 classes?

Mr. Dana: Yes, sir.

Mr. Stedman: Suppose you had instituted comparisons between Amarillo and Wichita Falls, Fort Worth and Dallas, and all the rest of Texas lying in common point territory, what would have been the showing then?

599 Mr. Dana: Well, you mean so far as the Fort Worth & Denver are concerned? I do show them with the Panhandle & Santa Fe.

Mr. Stedman: Oh, no; the Panhandle & Santa Fe do not reach that country I am talking about. Suppose you had instituted a comparison or comparisons between Amarillo and Wichita Falls and Fort Worth and other places in Texas, what would be the result of that comparison?

Mr. Dana: Well, I would have to make compilations to tell you. I am not going to guess at it, I do not know.

Mr. Stedman: Would you not say offhand, without time for reflection, even, that Amarillo is at a great disadvantage as compared with those places?

Mr. Dana: No; I would not, and I am not going to commit myself to something I do not know about.

Mr. Stedman: Very well, if you cannot.

Now, is not Amarillo, generally speaking—I am not confining it now to the classes—at a great disadvantage as compared with Quanah by virtue of the fact that everything Amarillo gets in pays the differential—I mean intrastate—and Lubbock, who pay a differential, whereas Quanah has considerable business and does not pay any differential at all, is not that true?

Mr. Dana: I do not think so.

Mr. Stedman: Well, now, does not the differential, as it now operates under 2-B apply from the beginning of the movement into and out of Amarillo?

Mr. Dana: Yes, sir.

Mr. Stedman: Well, now, is it not true that a movement beginning at Quanah which is in common point territory, could move in some direction without paying any differential at all?

Mr. Dana: It may be moved east from Quanah.

Mr. Stedman: And it may be moved south from Quanah?

Mr. Dana: Yes.

Mr. Stedman: It may move west somewhat?

Mr. Dana: I think about 4 and a fraction miles.

Mr. Stedman: Yes; a short distance west. Now, then, on the inbound business—I am referring now to Texas inbound
600 business—that is what I meant a while ago when I said the Commission had not decided in any opinion that it made no difference except in the Shreveport case—on the inbound business from places in Texas Amarillo pays the differential on everything, do they not?

Mr. Dana: That is right.

Mr. Stedman: Quanah does not pay anything?

Mr. Dana: No, that is not correct, because if Quanah got some stuff from differential territory, of course, she would pay the differential.

Mr. Stedman: Anywhere except differential territory?

Mr. Dana: Yes, sir; if Quanah got her stuff from common point territory.

Mr. Stedman: The same with Sweetwater?

Mr. Dana: That is true.

Mr. Stedman: Sweetwater is in common point territory, is it not?

Mr. Dana: Yes.

Mr. Stedman: Sweetwater is very highly competitive with Amarillo?

Mr. Dana: I should not say so, Lubbock intervenes between Sweetwater and Amarillo. Lubbock has three jobbing houses, two of which are also located at Amarillo, or two of Amarillo's jobbers have houses at Lubbock, whichever way you want to put it, and I rather think the Wattles Brothers and Nobles Brothers do their business from Lubbock to the vicinity of Lubbock and not from Amarillo.

Mr. Stedman: Well, Mr. Dana, that rule as to competition ye

would not lay down as universal, that if they have intervening town, there should not be any competition? You say Amarillo is not competitive with Sweetwater because Lubbock intervenes. You would not apply that rule generally, would you?

Mr. Dana: Now, Judge, suppose we take the towns, Lubbock lies almost equi-distant between Sweetwater and Amarillo. The
601 distance from Sweetwater to Lubbock is 121.1 miles, and from Amarillo to Lubbock is 121.5 miles. Under the old Texas Commission rates, as carried in Texas Tariff Number 3, the rates were exactly the same, namely, 1st Class 51 cents, 2nd Class 47 cents, 3rd class 43 cents, 4th Class 41 cents.

Under the rates as set forth in Texas Lines' Tariff 2-B the Sweetwater-Lubbock rates become 1st Class 70 cents, 2nd Class 60 cents, 3rd Class 49 cents, 4th Class 42 cents.

The Amarillo rates to Lubbock are, for each one of the 4 classes, just 6 cents over the rates from Sweetwater.

Now, the business from Sweetwater to Lubbock moves approximately 55 miles in common point territory, and I should not say that 6 cents per 100 pounds for that difference in movement in common point and differential territory was too great a burden to place upon the different conditions of traffic.

Mr. Stedman: Now, I am not committing myself on this question I am asking you now, or the other one I asked you, but do you remember Mr. Atkin's testimony the other day, in accounting for how Shreveport was affected by Amarillo, or was competitive with it, he started out by saying substantially that Amarillo was competitive with Sweetwater and Sweetwater was competitive with Abilene and Abilene with Weatherford and Weatherford with Fort Worth, and he carried it down to Shreveport by a system of concentric circles, as he called them?

Mr. Dana: Yes.

Mr. Stedman: Do you agree with him about that?

Mr. Dana: I certainly do.

Mr. Stedman: How do you say Amarillo and Sweetwater are not competitive then? He carried it on down to Sweetwater and that way.

Mr. Dana: They are competitive in the matter of making rates, though. He was using that as an illustration in making rates from Shreveport going to points in Texas as compared with the rates between Texas points.

Mr. Stedman: Well, he was talking about the relation of rates, was he not, the relation of rates between those places?
602 Mr. Dana: Between Shreveport and the various Texas towns, yes.

Mr. Stedman: That is all I believe I have to ask now.

Mr. Stinnett: Mr. Dana, do you recall Amarillo was made a Texas common point in 1905?

Mr. Dana: No, sir; I think I heard you state, Mr. Stinnett, it was; I really do not know.

Mr. Stinnett: Well, do you recall at the moment how much rail-

way the Panhandle & Santa Fe has constructed in the Panhandle since 1905?

Mr. Dana: Well, I rather imagine since 1905 everything in the Panhandle with the exception of that portion of the line between Amarillo and the Texas state line had been built. I am not sure. They tell me that Higgins to Farwell was built before that.

Mr. Stinnett: I would infer from your statement with reference to the Belen Cutoff, the line from Clovis and Texico to Belen was built to complete the transcontinental system, by which you would escape the Glorietta pass elevation; was not that the idea to be gathered from that?

Mr. Dana: To give us a low grade line.

Mr. Stinnett: To give you a low-grade line. Well, it seems as if the construction of railway in the Panhandle was desirable to the Santa Fe from another view point, because you have built considerable mileage in the Panhandle?

Mr. Dana: Yes; you and I are not going to quarrel about that. I think the Panhandle has the making of a fine country.

Mr. Stinnett: Well, I just wanted to make that point. That would be my inference from your statement, at least, that the matter of building that cutoff was to make a low-grade line; otherwise, it would not have been built, probably, across that country, but for the low-grade line you were supposed to get.

Mr. Dana: Oh, no, we believe, in the course of time, that the territory in the Panhandle South Plains country is going to develop considerable traffic. Our railroad was built with that in
603 mind.

Mr. Stinnett: You are building roads now, are you not?

Mr. Dana: Yes, sir; and while you may build a railway upon future prospects it does not seem to be hardly fair to carry the present traffic upon the basis of future prospects. That is to say, you cannot build your railway looking to the future and make your rates also upon some business which you hope to secure at some future time.

Mr. Stinnett: Well, quite true. That is why I would think your comparisons to density of tonnage per capita in the Panhandle as compared with the area, taking the railroad mileage, compared with that great area there is in the Panhandle—it is a hardly fair comparison, considering there is so much of the Panhandle that has no railroad at all.

Now, it seems to me that the practice of the Panhandle—we have railroads where the population exists, and can move grain and grain products and move it within a distance that can be done profitably, that comparison should be made rather than the comparison of the railway mileage with the population of the whole area of the Panhandle, where the population must necessarily be very sparse remotely from the railway line. Do you not think that would be a better comparison.

Mr. Dana: Well, if we take, in our traffic statements, all of the traffic we handle, that necessarily moves from points which are near the railway and also those which are remote.

Mr. Stinnett: Yes.

Mr. Dana: We do not exclude any traffic from some fellow who lives 30 miles away, so why should we not, in making our comparison, take in the entire territory?

Mr. Stinnett: Well, the point I was trying to make was this, Mr. Dana, that as you build your line and the country develops and settles up, the time arises when your differentials should cease to apply to that territory, and you come along and build another part of your line, and go through a sparse and uninhabited territory of the Panhandle, they should have the differential until it ceases to be necessary.

When you built your line from Farwell to Lubbock that was a cattle range, was it not, when you built it?

Mr. Dana: Yes, and still is.

Mr. Stinnett: Well, it is something right now. You built it on prospects, but your developments between Amarillo and Lubbock and Sweetwater is quite a different thing. You put on an extra passenger train, did you not, not long ago, between Amarillo and Sweetwater?

Mr. Dana: We were forced to put it on.

Mr. Stinnett: Well, how is it doing? Profitable?

Mr. Dana: I have not found out.

Mr. Stinnett: I had understood it was.

Mr. Terry: The train was put on, Mr. Stinnett, because the through train went through the country at night, and people complained they had to sit up all night to get anywhere. That was the principal reason the train was put on.

Mr. Stinnett: That was my observation. I have traveled on it myself, and my observation was that the trains were so badly crowded between Amarillo and Lubbock, all along the line, that the people demanded another train, and another daily train——

Mr. Terry (interrupting): Well, it is not a matter of enough importance to take up time on here.

Mr. Stinnett: Well, Mr. Dana, just one more question.

How does the country between Fullerville and Sweetwater compare with the country between Fullerville and Amarillo, as to development and resources?

Mr. Dana: Well, the line, Mr. Stinnett, from Sweetwater—oh, you might say practically as far as Lubbock, with the exception of the two towns of Snyder and Post, does not seem to me to show very much development. The greatest development on the Panhandle & Santa Fe Railway is due probably to the influence in the one instance of the Post interests, and in the other of what is known as the Pierson syndicate, the Texas Land & Development Company, which has taken place, as you know, in the vicinity of Post and in the vicinity of Plainview?

Mr. Stinnett: That is all.

Mr. Stedman: One more question.

You are familiar with the territory of the Fort Worth & Denver? You have traveled over the Fort Worth & Denver from Amarillo down to Fort Worth?

Mr. Dana: I have ridden over it some, Judge.

Mr. Stedman: That is a pretty highly developed country from Amarillo down to Fort Worth?

Mr. Dana: Well, I would put it this way; the territory along the Fort Worth & Denver is higher developed than it might be along the Panhandle & Santa Fe.

Mr. Stedman: That is what I was talking about. A number of good towns there; Clarendon and Childress and Quanah; they are pretty good towns?

Mr. Dana: Yes, sir, they are good towns for that country.

Mr. Stedman: The country is very well settled up?

Mr. Dana: Well, now, that depends upon just what other country you are going to compare it with, Judge. Nobody from the east for instance, who has lived in the east——

Mr. Stedman (interrupting): Oh, no, I am not talking——

Mr. Dana (interrupting): Or the central states—it would not be settled as compared with Illinois and Iowa.

Mr. Stedman: Well, no part of Texas would compare with them, except very little?

Mr. Dana: Well, around Dallas and Fort Worth, I think they would.

Mr. Stedman: Now, speaking of development, you have the Texico Lubbock cutoff, from Lubbock to Farwell or Texico, have you not?

Mr. Dana: Yes.

Mr. Stedman: Now, has not that country developed very remarkably since your road was built in there, from Lubbock to Texico, through the counties of Lubbock and Bailey and Palmer?

606 Mr. Dana: No; unfortunately it has not. It so happens, Judge, in that territory, the land is still held in very large ranches; some of them as big—well, I have them here.

Mr. Stedman: Well, you need not go into detail.

Mr. Dana: Well, there has been very little settlement on that piece of line between Texico and Lubbock; almost none.

Mr. Stedman: Now, there are some right good towns there. That town of Littlefield is a good town there, is it not? Have you ever been through Littlefield?

Mr. Dana: Yes, sir; good town compared with other towns out there, but there is no other town out there.

Mr. Stedman: There is a good deal of business done there?

Mr. Dana: There is some business done there.

Mr. Stedman: Well, then, there is a town called Muleshoe. I have heard of that. What kind of a town is Muleshoe? That is Mr. Cleburne's town, is it not?

Mr. Dana: You have named them all along that line, Muleshoe, Littlefield and Lubbock.

Mr. Hershey: Give the population of those towns.

Mr. Dana: I should say they would probably have 200 people.

Mr. Hershey: They would not have any more than that?

Mr. Dana: I do not think so.

Mr. Stedman: Now, they are breaking up that country, are they not, taking in country where they have the shallow water wells?

are they not developing that country pretty widely with what they call shallow water irrigation?

Mr. Dana: That is what we call shallow water irrigation.

Mr. Stedman: Does not your company in Chicago, through Mr. Seagraves, through his circulars, advertise that land there as shallow water country?

Mr. Dana: Oh, yes; and I think it would develop if these fellows who own here 225,000 acres, and 208,000, and 1,389,000 acres, would only let go and give somebody a chance to go in there and develop it.

Mr. Stedman: What is the name of that Michigan man
607 who owned all of that——

Mr. Dana (interrupting): Ellwood?

Mr. Stedman: No; another one.

Mr. Dana: Warren.

Mr. Stedman: Warren?

Mr. Dana: He has got a big bunch he is holding on to. Littlefield has a big bunch here.

Mr. Stedman: Littlefield divided his and sold it off. Has not Littlefield sold off quite a good deal of that.

Mr. Dana: No, I think not. Somebody sold off some just recently, to the Ferneau Brothers, I think it was, it seems to me some 35,000 acres in the vicinity of one of those stations.

Mr. Stedman: Well, one other question.

Suppose Warren and those other people would turn loose of the land there and sell it for shallow water irrigation, as it is advertised by Mr. Seagraves, would not that country settle up rapidly?

Mr. Dana: Well, it would settle up. I do not know whether it would be settled rapidly or not, because there is too much country up there to settle. It will not be settled up there for a long time to come.

Mr. Stedman: That is all.

Mr. Atkins: When you spoke of Muleshoe and Littlefield, did you not overlook Roundup and Lariat?

Mr. Dana: Oh, there is Porter, Roundup, Yellowhouse and Lariat and Shallow Water, but there are no towns there; they are just station names.

Mr. Stinnett: You are entitled to differentials on that line.

Mr. Simons: You know, Mr. Dana, how old Yellowhouse is?

Mr. Dana: No; I do not, but I imagine that is a ranch house. I do not know how ling that name has been retained for that particular spot. I suppose a long while.

Mr. Nickels: Mr. Dana, if there is going to be a differential territory in Texas at all, do you not think it ought to be cut into
608 at least three zones instead of two, as it is now?

Mr. Dana: Why, Mr. Nickels, I hit the state of Texas the 1st of July last. Ever since then I have been mixed up in one rate case or another. In the interim I have tried to see something of the Panhandle & Santa Fe Railroad, to which, according to Mr. Sager, I ought to devote 90 per cent of my time, but on the contrary, I am giving it about 10 per cent. I would not undertake to say.

Mr. Nickels: I did not know how closely you were acquainted——

Mr. Dana (interrupting): I am not familiar enough with the situation to really say.

Mr. Nickels: If it should turn out, however, in this tier of east Texas counties known as the Pine Woods that the tons one mile per mile of road are only about 50 per cent as high as they are on your road, then you would say there ought to be a differential over there, provided you had shown justification for your road, would you not?

Mr. Dana: Not altogether, because I do not know whether you are including in that statement all tonnage, interstate as well as intrastate.

Mr. Nickels: No, just purely state traffic. The number of people per mile of road, in other words, does not mean anything unless they are all tonnage producers. Do you know whether or not the niggers, who, as a general proposition, inhabit this strip of counties, are tonnage producers for the railroad to any considerable extent?

Mr. Dana: No; I do not know.

Mr. Fulbright: The best cotton-picking machine in the world, Mr. Nickels.

Mr. Nickels: I know they are good cotton-pickers, but that is about all they do produce.

Now, we will take the Cotton Belt, for instance, which was, before the consolidation, 694 miles long. Your line is 654 I believe?

Mr. Dana: No; the mileage which we operate at the present
609 time 670.33 miles.

Mr. Nickels: Well, now, the Cotton Belt's figures were 79,693 as against this year about 181,000, as I figure.

Mr. Dana: Well, I do not think you could pick out one particular year as the basis—or should pick out one particular year as a basis of your comparison. The two tonnage statements which I have shown here on Exhibits N-1 and N-2 for 1915 and 1916, it so happens, cover the heaviest periods of traffic that the Panhandle & Santa Fe has ever known.

Mr. Nickels: Well, it is almost twice as large as the Cotton Belt for the preceding year. Now, I was just using that as an illustration. Of course, that does not represent the entire situation over there, but take the Eastern Texas, a little line of 33.5 miles as compared with the Crosbyton & South Plains, 38 miles long, and the density is nearly twice as great as on the Eastern line.

Mr. Dana: Well, of course, I can accept your statement on that, but I do not know about the Crosbyton & South Plains.

Mr. Nickels: Now, suppose it should so happen that if we compile all of these figures, and they are representative of that particular tier of counties, which would constitute a strip something like 100 miles wide, would you not say that if you could justify your differential in your territory, there should also be one for this Eastern territory?

Mr. Dana: There might be some of the lines there in which that would be the case. You would want to know all of the conditions which surrounded the traffic.

Mr. Nickels: I say, all of the facts are here, and if, when the final compilation is made, these examples are fairly representative, they should have an entirely different condition in that strip of country

than what you have in this central strip here around Dallas, where half of the people live?

Mr. Dana: I think that, generally speaking, every railroad is entitled to a fair return upon its investment.

610 Mr. Nickels: As a matter of fact, has not the Railroad Commission allowed some special differentials right there in that territory for that very reason, or are you familiar with those things.

Mr. Dana: Well, that is a fact; I do not know where, but there are short lines, as I recall it, to which the Texas Commission allowed differentials.

Mr. Nickels: They allowed one a part of the Cotton Belt this territory, did they not?

Mr. Dana: I do not know, Mr. Nickels; that may be.

Mr. Nickels: Well, that is the main justification that you offer for the differential in the Panhandle, is the scarcity of tonnage. Of course, the number of people per square mile is not important, except as it may be an index to the tonnage.

Mr. Dana: Well, it is fair to presume that if there were more people out there, unless they all went to the towns, there would be more tonnage produced.

Mr. Nickels: I believe that is all.

Redirect examination:

Mr. Terry: If it should turn out that through this east Texas country Mr. Nickels is referring to, that some of the roads have a very heavy tonnage, such as the Texas & Pacific, running through that country, and the Houston, East & West Texas has a good tonnage, and the International & Great Northern runs through that country and has a fairly good tonnage, the Beaumont division of the Santa Fe runs through that territory and has a very heavy lumber tonnage, should not all of those things be taken into consideration, as well as the limited amount of tonnage of the Cotton Belt and Eastern Texas Railroad? You would have to look at the whole situation, would you not?

Mr. Dana: Why, I should think so. It would not be fair to establish your rates upon the business of one given railroad in a given section.

611 Mr. Terry: That is all.

Mr. Palmer: I would like to ask Mr. Dana one or two questions.

Examiner Thurtell: Very well.

Recross-examination:

Mr. Palmer: In this Exhibit K here you show on page—the page is not numbered, but it is the first page of the appendix—that on shipments from points on the Atchison, Topeka & Santa Fe and Leavenworth & Topeka and Gulf Colorado & Santa Fe divisions on traffic from Higgins to Texico delivered to the Atchison, Topeka & Santa Fe, or vice versa, the Panhandle & Santa Fe receives 5.5 cents per 100 pounds, and if I understood it right in another part of this it

shows that on the transcontinental traffic they receive 2.5 cents per 100 pounds arbitrary for the haul from Texico to Higgins, 218 miles.

Is that a proper understanding of it?

Mr. Dana: I do not just locate this, Mr. Palmer, the particular portions——

Mr. Palmer (interrupting): The first page of your appendix.

Mr. Dana: The first page? Yes; I have that.

Mr. Palmer: Divisions on traffic via Higgins, Texas, to Texico, New Mexico.

Mr. Terry: Is not that a ton-mile?

Mr. Dana: Oh, you are back in the appendix there.

Mr. Palmer: Yes.

Mr. Dana: Yes; I have it now.

Mr. Palmer: That means that on those two particular classes of traffic the Panhandle & Santa Fe receives an arbitrary of 5.5 cents per 100 pounds for that distance hauled from Texico to Higgins or Higgins to Texico.

Mr. Dana: Well, I think if you will figure that out it will figure out just—that rate figured out is a half a cent or 5 mills per-ton-per-mile, that 5.5 cents.

Mr. Palmer: Well, maybe it does, figured out. Now there is
612 an exception to that on traffic moving to or from the Pecos Valley Line, the old Pecos Valley Line in New Mexico. What per cent do they get on traffic that originates on and is delivered to the Panhandle & Santa Fe?

Mr. Dana: That is not included in the overhead. We get our mileage pro-rate.

Mr. Palmer: Mileage pro-rate with a minimum of 25 per cent?

Mr. Dana: Yes; minimum of 25 per cent. In other words, we get a larger division upon that than we do upon the trans-continental traffic.

Mr. Palmer: Well, now, does the Panhandle & Santa Fe own any equipment of its own?

Mr. Dana: I really do not know.

Mr. Palmer: Any cars or engines?

Mr. Dana: I do not know.

Mr. Palmer: In dividing a rate from, say, Amarillo to Kansas City, that is on a mileage pro-rate with a minimum of 25 per cent, and that would figure out something near 50 per cent taking the whole line?

Mr. Dana: From Amarillo to Kansas City?

Mr. Palmer: No; it would not be 50 per cent either. Any way, it would apply on that.

Mr. Dana: Well, it is 551 miles from Amarillo to Kansas City.

Mr. Palmer: Well, now, take some point beyond Amarillo. There is a differential applying from Kansas City. Would that differential be deducted for account of the Panhandle & Santa Fe before the division was made?

Mr. Dana: No; those rates are made upon a straight division of the rate itself.

Mr. Palmer: And the same applies on any traffic that moves from defined territories, where there is a differential applied?

Mr. Dana: Well, I do not——

Mr. Palmer: That is to say, the Panhandle lines in differential territory would not get the benefit of that differential en-
613 tirely?

Mr. Dana: You mean where the rate is made over Amarillo, for instance?

Mr. Palmer: Well, where it is made over the common point basis.

Mr. Dana: Over the common point basis? No; that entire rate is divided.

Mr. Palmer: You have here another example showing divisions on a shipment of kaffir corn from Tulia to Temple, and you have divided the rate via Sweetwater, Texas & Pacific, Fort Worth and the Missouri, Kansas & Texas, while ordinarily a movement of that kind would go entirely via the Santa Fe, would it not?

Mr. Dana: It would if we could get it that way, you may be sure.

Mr. Palmer: Well, can you not usually get it that way? It is the shortest route?

Mr. Dana: Well, we are not always able to control the business. Whenever we can, you may be sure we do.

Mr. Palmer: What was the object, then, in showing shipments of that kind where you do not always get the haul on your line where there is such a haul?

Mr. Dana: Well, the principal reason, to tell you the real truth about it is, we started to make a comparison of the mill products in that particular instance; that is, the less than carload part of it at Fort Worth. Then, it seemed to us if we were going to compare kaffir corn and milo maize, we ought to compare kaffir corn and milo maize, and not in one instance kaffir corn and milo maize and in the other instance kaffir corn and flour.

Mr. Palmer: You had something to say in regard to rates which applied between the Panhandle territory and points in adjoining states, where you said those rates have been influenced by the rates applying in Texas, and for that reason were unduly and unreason-
ably low, and that you were preparing to reorganize that
614 situation, or correct it.

Now do you know what the situation is in regard to the interstate application of rates on the Santa Fe System there, as between rates applying in the Panhandle territory and rates applying in the Pecos territory in New Mexico, where they carry a very much lower basis of rates from Roswell to points west of Clovis for practically the same mileage as applies under the present scale from Amarillo?

Mr. Dana: Would you mind repeating that? I lost the point of origin in one case.

Mr. Palmer: Well, as between Amarillo and Roswell as points of origin, applying to the territory west of Clovis, the basis in New Mexico is much lower—I do not mean much lower, though in some instances it is much lower—from Roswell to those points than from

Amarillo to those points, and the distance is practically the same from both Roswell and Amarillo. Was that a situation that was influenced by the Texas state rates?

Mr. Dana: Well, the rates from Roswell to any points on any line in New Mexico are fixed by the Corporation Commission of New Mexico.

Mr. Palmer: Did they fix those rates, or was that just a matter of agreement between the Commission and the Santa Fe?

Mr. Dana: Well, they held the hearings at Roswell, as you perhaps know, at Santa Fe and Las Vegas and Albuquerque, and those were the rates that were finally agreed upon.

Mr. Palmer. Were those hearings held by the New Mexico Commission?

Mr. Dana: Yes; we have the opinion or order, if that is the form in which the Corporation Commission of New Mexico designates their promulgations, and it states that, I think.

Mr. Palmer: Well, the point I wanted to get at, Mr. Dana, was just this: that the rates in Texas were not responsible for that lower basis in New Mexico?

Mr. Dana: Well, I did not make reference to the intrastate
615 rates in New Mexico. I was referring to the rates which obtained between Amarillo and, for instance, on into New Mexico.

Mr. Palmer: Yes; I understand that. But still, those rates in New Mexico for the same distance are lower than those interstate rates which you say were influenced by the Texas Commission rates.

Mr. Dana: Are lower than the Texas Commission rates?

Mr. Palmer: Rates in New Mexico——

Mr. Dana (interrupting): The rates in 2-B?

Mr. Palmer: Rates in New Mexico lower than the interstate rates which apply for the same distance.

Mr. Dana: Well, I would not admit that without having the tariff before me.

Mr. Palmer: For instance, we will assume that the rates from Roswell to Melrose, are lower than the rates from Amarillo to Melrose, the distance being the same; it was not the Texas-made rates that influenced the rates from Roswell to Melrose.

Mr. Dana: If the Roswell-Melrose rates—you say assuming they were lower?

Mr. Palmer: They are lower from Roswell to Melrose than from Amarillo to Melrose?

Mr. Dana: Well, that may be so.

Mr. Palmer: For the same distance. The point I wanted to get about is that the interstate rates, which you claim were influenced by the Texas rates, which were lower than the New Mexico rates, had nothing to do with the New Mexico rates.

Mr. Dana: That may be; we did not make the New Mexico rates.

Mr. Palmer: Well, now, another thing. You claim those rates were affected by the Texas Commission rates. Is that the rule

why the rates from Amarillo to Carlsbad are just as high as the rates from Wichita, Kansas, to Carlsbad on the 4 classes?

Mr. Dana: Well, to start out with, the rates from Wichita into the Panhandle country are, I am informed—now, I am speaking of something I really do not know much about—were influenced by the rates which obtained from Fort Worth to the Panhandle country, the distance in each instance being about the same. Those rates were carried that way. It is the intention in revising our rates in New Mexico not only to revise the rates from Amarillo into New Mexico, but also revise those from Wichita, Fort Worth and Oklahoma City, Galveston and every other point into the same territory.

Mr. Palmer: Yes; that is my understanding about your revision of the Wichita-Amarillo rates. The point I am bringing up now is comparing the Texico rates and the Farwell rates, and the facts of the case are that, from a long study of the rates, I have never been able to find where any basis in Texas had anything to do with the rates applying through, into or out of the Panhandle. They were influenced more by the general situation.

On this idea a competition between Sweetwater and Amarillo, you have 55 miles of railroad from Sweetwater to Fullerville, territory which you say is not as productive as some of the territory north of Fullerville. In other words, in competing with Lubbock, which is half way between Amarillo and Sweetwater, Amarillo is penalized for that 55 miles of territory?

Mr. Dana: Well, you take the boundary line between common point and differential territory, I expect that is the way you would have to figure it. If that boundary line was fixed where I think it should be fixed, it would be away east of Sweetwater.

Mr. Palmer: I have just another question with regard to this population increase, and that is about all I wish to refer to.

You show the population in 1916 in these 47 counties of 202,123. That is, we will say, approximately 10,000 less than the estimate I made in my exhibit No. 1. I have 41 counties and you have 47.

Now, my figures show that according to the United States Census reports from 1900 to 1910 there was an increase of 320 per cent for those counties, and do you think, in view of that percentage of increase in those 41 counties that I used, that an increase of 79 per cent from 1910 to 1917 is at all unreasonable, provided my figures are in any way authentic? That is, coming from an authentic source?

Mr. Dana: Why, I do not think, Mr. Palmer, you can go very much on percentages of increase in a territory such as that is.

Mr. Palmer: Well, you gave us—the United States Census Bureau said a fraction of 13 per cent of the increase from 1900 to 1910, and applied that percentage to make an estimate in 1916. You gave us the benefit of 27 and a fraction increase in this western part of Texas, and using the same basis that the Census Bureau used, we would use 300 per cent instead of 27?

Mr. Dana: Well, I do not think so, if you use it county by county.

Mr. Palmer: Now, in regard to that, did you ask the County judge

when you got those figures of the last census at Amarillo as to w
was his opinion of that census as a criterion of the population of
town?

Mr. Dana: No; I did not say a word to him, Mr. Palmer, ex
I knew they were taking a scholastic census, and after I had m
two or three visits it was completed, and he gave me the figures,
I did not tell him what they were wanted for, and I did not ask
anything about it as to what he thought about it.

Mr. Palmer: Well, I got the figures from the superintendent
the schools, and he told me he would not judge that a measure of
population of the city on account of the character of the populat

Mr. Terry: Do you mean they were degenerating there in p
of quality in Amarillo?

Mr. Palmer: No, he meant they had so many railroad
ployes.

618 Mr. Terry: Well, you have had them all the time, h
you not?

Mr. Dana: Don't you want them?

Mr. Hershey: Mr. Examiner, I want to ask Mr. Dana just
question.

Examiner Thurtell: All right.

Redirect examination:

Mr. Hershey: Your line is all of it in differential territory, p
tically?

Mr. Dana: With the exception of approximately 55 miles.

Mr. Hershey: And ever since you have been in Texas, the gr
part of your time has been taken up in studying this very situa
you are discussing now as to differential territory rates?

Mr. Dana: That is true.

Mr. Hershey: Now, without any regard to the volume of the
ferential, or where the common point line should be drawn, is t
any way by which the differential basis of rates may be establishe
that country in a wholly non-discriminatory manner as against
tain points, except on the basis endorsed by the Interstate Comm
Commission now carried in Tariff 2-B?

Mr. Dana: Why, I cannot conceive of any other basis of carr
a differential rate except to apply the differential for the full dis
traversed in differential territory.

Mr. Hershey: Charging every person the same amount fo
same service in differential territory?

Mr. Dana: That would seem to me the only possible basis.

Mr. Kayser: Just one question if you please.

619 Testimony of Mr. U. S. Pawkett, pps. 4755-4759.

This exhibit which I will offer as Number 22, shows that wh
differential at all is discriminatory in its effect, it is very mu
marked than in the case of exhibit Number 21, which is based

differential application in tariff 2-B. This exhibit shows the rates adding a differential at distances beyond 400 miles.

(The statement in question, consisting of one page, so offered and identified was received in evidence and thereupon marked Interveners' Exhibit Number 22, Witness Pawkett, received in evidence May 21, 1917, and is attached hereto.)

Mr. Pawkett: It shows, for instance, at a point 25 miles west of San Antonio the difference would be first class 79, second class 67, third class 54 and fourth class 47 under the rate from Shreveport, as compared with the difference of 76 cents, and so on, in exhibit number 21.

Down to 300 miles, it shows a difference of San Antonio under Shreveport of 36, 30, 27 and 25 on classes 1, 2, 3 and 4 respectively, compared with Exhibit 21 of 6, 5, 4 and 4 respectively.

It shows further that at El Paso, 619 miles, with a proper application of the differential rule, San Antonio would have an advantage of 5 cents first class to offset its 402 miles nearer proximity to El Paso via this route than is Shreveport. Thus, while denying San Antonio its benefit to the full extent of its geographical location, under what we consider the proper differential application, and what has been the application for more than 30 years, made by the railroads, and which they never sought to change——

Mr. Terry: Now, that is not rebuttal, your Honor; he testified to that on direct examination.

Mr. Pawkett: It is in docket 7628, if you want to know about it, brought in by Mr. West.

Mr. Terry: Well, go ahead; we are holding the watch on you; you have got a half minute longer.

Mr. Pawkett: That is the purpose of those exhibits, and all I have to offer on that proposition.

If it may be understood that in the consideration of the different commodity rates, as they come up, this effect may be shown as relating to the specific commodity, that will be all on that; otherwise, it will be necessary for us to call a number of witnesses to the stand for the second time, and it will have the effect, unquestionably, of greatly lengthening the hearing.

Mr. Terry: These computations can all be made from the tariffs anyway, without proving them by witnesses.

Mr. Pawkett: These?

Mr. Terry: Yes.

Mr. Pawkett: They were made from the tariffs.

Mr. Terry: We can agree to them.

Mr. Pawkett: Well, that is all right.

Mr. Waldo's statement was—I will not say specious—but taken from the different view point. (This is, taken entirely from the San Antonio viewpoint, and to show the discrimination proposed against it, the largest city in the state, and one of the most important commercially, under the application of this rule. As I stated at Dallas, a differential, wherever you find it, is discriminatory. It is much

better, so far as the commercial existence and prosperity of Texas is concerned, to have that discrimination apply at a side track, a place where practically no shipments are made, than to have it applied to the largest city in the state, one with practically as much tonnage as any other individual shipping point.

That will be more fully developed in the consideration of the commodity rates as the various commodities are taken up for
621 consideration.

If you will pardon me for just one reference I want to make, then I will quit.

In Mr. Hogsett's exhibit A, he shows a number of points in the Panhandle to which San Antonio has its shipments since November 1, 1916; likewise, to other points in north and west as well as East Texas.

I want to say in that connection, that practically all of that business, particularly to the Panhandle country, is drugs and related articles, and that in every case it is necessary for San Antonio to equalize the rates as compared with Wichita, Dallas and Fort Worth, making that burden by reason of the differential application very much more severe than was the case prior to November 1, when the proper rule for application of the differentials was proposed.

Mr. Terry: We have no questions.

Mr. Byars: Just one question.

You undertake to show by these exhibits that there has been a great deal of discrimination against San Antonio in favor of Houston and Shreveport which did not exist before tariff 2-B became effective?

Mr. Pawkett: Yes, sir; but the same discrimination exists against San Antonio with respect to both Dallas and Fort Worth and Waco and Austin and all other points situated east of here. In the same way, it discriminates against Dallas and Fort Worth in favor of Shreveport as against Abilene and Baird, Weatherford, and other shipping points west of Fort Worth.

622 *Defendants' Evidence.*

Defendants introduced and read in evidence the "First Amended Petition" filed August 7th, 1917, by the State of Texas in the 53rd District Court of Travis County, Texas, in cause No. 34,832, then pending, styled "State of Texas vs. Abilene & Southern Railway Co. et als.," which "First Amended Petition," it is agreed, was exactly the same as the Original Petition filed therein by the State of Texas on July 20th a copy of which Original Petition was attached as an Exhibit to Plaintiff's Second Supplemental Bill, and has been set forth at length herein above, except that in said "First Amended Petition" Paragraphs "IV," "VI," and "VII" were thereof, as set forth immediately below, were substituted for corresponding Paragraphs of said "Original Petition," and except, further, that Exhibits Nos. 4 and 5 were added by said "First Amended Petition," which substituted Paragraphs and Exhibits read as follows:

Paragraph "IV."

Prior to November 1, 1916, certain class and commodity rates had been prescribed under the law, and under the color of the authority of the law, to apply to the receipt, transportation and delivery of articles and commodities moving in intrastate transit and commerce within the State of Texas, and the class rates and rates on such commodities charged and to be charged by each and all of the Defendants for the receipt, transportation and delivery of such articles and commodities moving in intra-state transit and commerce between the points and within the territory described in the next succeeding subdivision of this petition, and so moving for distances less than three hundred and fifty-one (351) miles, could not, and cannot in the future, in any event, lawfully exceed the maxima rates for distances less than three hundred and fifty (350) miles shown in Exhibit No. 1, filed herewith and made a part hereof, and which maxima rates for such commodities are shown in Exhibits Nos. 2 and 3, filed herewith and made a part hereof, except by the differential rates prescribed by the Railroad Commission of Texas for classes and various commodities, which differential rates may lawfully be applied only under the conditions prescribed by the Railroad Commission of Texas therefor, and which class differential rates and conditions under which applicable are shown in Exhibit No. 4 attached hereto
923 and made a part hereof, and which commodity differential rates and the conditions under which same may be applied are shown in Exhibit No. 5 attached hereto and made a part hereof. But notwithstanding the premises the Defendants, and each and all of them, jointly and severally, pursuant to an agreement and conspiracy theretofore entered into by them and each and all of them to violate the laws of this State and to inflict great and irreparable injury upon Plaintiff and the shipping public, have continuously and on each and every day since November 1, 1916, demanded, charged and collected, for the receipt transportation and delivery by them of such articles and commodities so moving, and to move, rates greatly in excess of those so prescribed as maxima and the aforesaid differentials, and, unless the relief herein prayed is granted, they, and each and all of them jointly and severally, pursuant to such agreement and conspiracy, will continue to demand, charge and collect for the receipt, transportation and delivery of such articles and commodities so moving, and to move, rates greatly in excess of those so prescribed as maxima and the aforesaid differentials; and by reason of the premises the Defendants, and each and all of them, have conspired to violate the laws of the State of Texas, and have violated such laws, and threaten to and will continue to violate such laws, unless the relief herein prayed is granted and thereby have greatly and irreparably injured, and threaten to and will continue greatly and irreparably to injure, Plaintiff and the members of the shipping public in this State, for which injuries Plaintiff has had, and now has, no adequate remedy at law.

Paragraph "VI."

Wherefore, Plaintiff prays that the Defendants, and each of them be cited in the terms of the law to appear and answer hereunto, and that upon final hearing hereof, Plaintiff have judgment against them, and each and all of them, forever enjoining, restraining, and prohibiting them, and each of them, and their respective officers, agents and employes from demanding, charging or collecting any rate or rates, for any, and all such movements as are described in the last succeeding Subdivision of this Petition, in excess of the rates therefor as prescribed and shown in Exhibits Nos. 1 to 5, inclusive, filed herewith.

624 In the alternative, in the event the Court should not grant the full relief hereinabove prayed, plaintiff prays that it have such partial relief with respect to any or all of such movements to which it may show itself entitled.

Plaintiff prays for judgment for all costs, and for such other relief, general and special, to which it may be entitled.

Paragraph "VII."

Plaintiff says that each day of the continuance of the aforesaid acts of the Defendants, and each of such acts, inflicts upon it, and upon the shipping public, great and irreparable injury for which it has not adequate remedy at law, or otherwise than as herein prayed, and that such acts of the Defendants, and each of them, should be restrained, enjoined and prohibited, pending the final hearing of this cause.

Wherefore, Plaintiff presents this its application for a temporary injunction or restraining order, restraining the Defendants, and each of them, and their several officers, agents and employes from demanding, charging, or collecting any rate or rates for the receipt, transportation and delivery of any or all of such articles or commodities moving, or to move, in intra-State transit in each and all of the movements as described in Subdivision V of this Petition, in excess of those shown in Exhibits 1 to 5 attached hereto, pending the final hearing hereof, and prays that this Court will immediately enter its order and let its writ of injunction or restraining order issue to such ends.

B. F. LOONEY,
Attorney General;

Assistant Attorney General,
Attorneys for Plaintiff.

THE STATE OF TEXAS,
County of Travis:

I, Luther Nickels, do solemnly swear that the matters of fact set forth in the foregoing Petition are true and correct.

Subscribed and sworn to before me this the — day of August, A. D., 1917.

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Notary Public, Travis County, Texas.

Exhibit No. 4.

Class Rate Differentials.

Rates to or from points in differential territory on shipments moving more than 245 miles (except as hereinafter stated) may be made by adding to the Class Rates shown in Exhibit 1 the rates in the following table to apply by continuous mileage:

Distance, miles.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
20 and less	2	2	1	1	1	1	1	1	1	1
30 and over 20...	3	2	1	1	1	1	1	1	1	1
40 and over 30...	4	3	2	1	1	1	1	1	1	1
50 and over 40...	5	4	3	2	1	2	1	1	1	1
60 and over 50...	6	5	4	3	2	3	2	2	2	2
70 and over 60...	7	6	5	4	3	4	2	2	2	2
80 and over 70...	8	7	6	5	4	5	3	2	2	2
90 and over 80...	9	8	7	6	5	6	4	3	3	2
100 and over 90...	10	9	8	7	6	7	5	4	3	3
110 and over 100...	11	10	9	8	7	8	6	5	4	3
120 and over 100...	12	11	10	9	7	8	6	5	4	3
130 and over 120...	13	12	11	10	8	9	7	6	5	4
140 and over 130...	14	13	12	11	8	9	7	6	5	4
150 and over 140...	15	14	13	12	9	10	8	7	6	5
160 and over 150...	16	15	14	13	9	10	8	7	6	5
170 and over 160...	17	16	15	14	10	11	9	8	7	6
180 and over 170...	18	17	16	15	10	11	9	8	7	6
190 and over 180...	19	18	17	16	11	12	10	9	8	7
200 and over 190...	20	19	18	17	11	12	10	9	8	7
215 and over 200...	21	20	19	18	12	13	11	10	9	8
245 and over 230...	23	22	20	19	13	14	12	11	10	9
626										
260 and over 245...	24	23	21	20	13	14	12	11	10	9
Over 260	25	23	21	20	14	15	13	12	11	10

Exception 1.—Rio Grande Railroad.

Between—	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
Brownsville and end of track Laguna Madre	30	26	22	19	18	20	19	16	14	11
Brownsville and Point Isabel and intermediate points	26	21	17	15	12	14	13	11	9	6
Point Isabel and end of track Laguna Madre	10	8	6	5	4	4	4	4	3	3

Exception 2. St. Louis, Brownsville & Mexico Railway, south of Robstown, and San Antonio & Aransas Pass Railway south of Alice:

(*a*) The rates on all classes and commodities moving between points on the San Antonio & Aransas Pass Railway south of Alice and other points in Texas shall be made by employing, for such mileage south of Alice traversed by the shipments, the differential rates as prescribed in the various tariffs adopted or approved by this Commission regardless of the distance such shipments may move in excess of such mileage south of Alice.

(*b*) The rates on all classes and commodities moving between points on the St. Louis, Brownsville & Mexico Railway south of Robstown and other points in Texas (including Robstown) shall be made by employing, for the mileage south of Robstown traversed by the shipments, the differential rates as prescribed in the various tariffs adopted or approved by this Commission, regardless of the distance such shipments may move in excess of such mileage south of Robstown. (Circular No. 4812, effective August 1, 1915.)

3. Wichita Valley Railway: The line of the Wichita Valley Railway west of Sagerton shall be treated as in differential territory and the following differential figures shall be observed, under the rules governing the application of differentials, for the distance west of Stamford on shipments moving to or from the points named below:

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Stations.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
Brandenburg	3	2	1	1	1	1	1	1	1	1
Aspermont	4	3	2	1	1	1	1	1	1	1
Swenson	4	3	2	1	1	1	1	1	1	1
Peacock	5	4	3	2	1	2	11	1	1	1
Oriana — (Circular 3257, effective November 5, 1909	6	5	4	3	2	3	2	2	2	1
Jayton	6	5	4	3	2	3	2	2	2	1
Girard	7	6	5	4	3	4	2	2	2	1
Spur	8	7	6	5	4	5	3	2	2	1

(Circular No. 3104, effective September 15, 1909.)

4. Quanah, Acme & Pacific Railway: The line of the Quanah, Acme & Pacific Railway west of Quanah shall be treated as in differential territory, and the following differential figures shall be observed, under the rules governing the application of differentials, for the distance west of Quanah on shipments moving to or from the points named below (Circulars Nos. 3421, 4346, 4466, effective May 23, 1910, May 12, June 15, and December 18, 1913):

Stations.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
Lazare	3	2	1	1	1	1	1	1	1	1
Sommer	3	2	1	1	1	1	1	1	1	1
Baker	4	3	2	1	1	1	1	1	1	1
Swearingen	5	4	3	2	1	2	1	1	1	1
Paducah	6	5	4	3	2	3	2	2	2	2
Narcisse	6	5	4	3	2	3	2	2	2	2
Russellville	7	6	5	4	3	4	2	2	2	2
Roaring Springs, MacBain	8	7	6	5	4	5	3	2	2	2

5. Pecos Valley Southern Railway: Class rates applicable to shipments moving between points on the Pecos Valley Southern Railway and points on other lines in Texas shall be made by employing, for the distance moved by the Pecos Valley Southern Railway, the regularly prescribed differential rates regardless of the dis-
628 tance such shipments may move in excess of such Pecos Valley Southern Railway mileage actually traversed; that is, the provision that shipments must move more than 245 miles before differentials are added will be waived and differentials will be employed in all cases of joint shipments to or from points on that line.

Exhibit No. 5.

Commodity Differentials.

(1) Green or fresh fruits, berries and grapes; melons, green or fresh vegetables, cucumbers, cauliflower, cabbage, dill weed, onions, peppers and other fruits (except tropical fruits): melons and vegetables in carloads.

To the rates shown in Exhibit No. 2, applicable to the above named commodities, where the shipment is transported a distance of more than 250 miles to, from or between points in differential territory the following differentials may be added:

Distances, miles.	Differentials.	Distances.	Differentials.
20 and less	1	175 and over 150	6
40 and over 20	2	200 and over 175	7
60 and over 40	3	225 and over 200	8
80 and over 60	3.5	250 and over 225	9
100 and over 80	4	275 and over 250	10
125 and over 100	4/5	300 and over 275	11
150 and over 125	5	Over 300	12

Except that such differentials shall not apply on onions, carloads, from Rio Grande & Eagle Pass Railway points to points in Texas.

And except on such articles transported between points on the San Benito & Rio Grande Valley Railway or on the San Antonio & Rio Grande Valley Branch of the St. Louis, Brownsville & Mexico Railway, and other points in Texas, the following separate differentials (for account of those lines) will apply for the distance traversed on those lines, regardless of the total distance such shipments may move:

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5 miles and less	1 cent
10 miles and over 5 miles	2 cents
15 miles and over 10 miles	2½ cents
Over 15 miles	3 cents

(2) Blackstrap molasses: To the rates on this commodity shown in carload quantities of such commodity if transported more than 400 miles to, from or between points in differential territory.

Distances—miles.	Differentials.	Distances—miles.	Differentials.
10 and less	2	65 and over 40	4/5
20 and over 10	3	100 and over 65	5
40 and over 20	4	Over 100	5/5

(3) Unshelled peanuts, etc.: To the rates shown in Exhibit No. 2 for these commodities transported in carloads distances of 200 miles or more to, form or between points in differential territory the following differentials may be added:

Distances—miles.	Flour.	Wheat.	Corn.	Hay.
25 and less	1	1	1	1
50 and over 25	2½	2	1	1.2
75 and over 50	3¾	3	2	2
100 and over 75	5	4	2	3
150 and over 100	6¼	5	3	4
200 and over 150	7½	5	4	4½
250 and over 200	8	6	5	5
300 and over 250	9	6	5	5½
Over 300	10	7½	5	6

Exceptions.

Item 8. Quanah, Acme & Pacific Railway: The line of the Quanah, Acme & Pacific Railway west of Wheatland shall be treated as in differential territory, and the following differential figures, to accrue separately to that company, shall be observed, under the rules governing the application of differentials, for the distance west of Wheatland on carload shipments moving to or from the points named below:

Stations.	Flour.	Wheat.	Corn.	Hay.
Lazare, Sommer	1½	1	1	1
Baker	2	1½	1½	1½
Swearingen, Paducah	3¼	2	2	2
Narciso, Russellville	3¼	3	2	2
Matador Junction, Roaring Springs	5	4	2	3
Macbain	5	4	2	3

Item 9. Pecos Valley Southern Railway: Rates on carload shipments of articles subject to this tariff, transported between points on the Pecos Valley Southern Railway and points on other lines in Texas may be made by adding to the rates otherwise provided and applicable to or from such Pecos Valley Southern points (where such rate otherwise provided is the maximum common-point rate with or without a differential), the following differentials (for account of the Pecos Valley Southern Railway Company,) in cents per 100 pounds:

On Flour and articles taking Flour rates	1¼
On articles taking Wheat, Corn or Hay rates	1½

Item 11. On all carload shipments of articles covered by this tariff moving under joint rates between points on the lines named below and points on other lines in Texas, the special differentials shown below, in cents per 100 pounds may be added for the distance traversed on such lines regardless of the total distance such shipments may move *eds* separately from and in addition to diggerentials which may be provided for other lines beyond the junctions with the lines named:

San Benito & Rio Grande Valley Railway.

On articles taking Flour rates	3
On articles taking Wheat or Corn	2
On articles taking Hay rates	2

Motley County Railway.

On all articles covered by this tariff	4

Riviera Beach & Western Railway.

On Flour and articles taking Flour rates..... 7
On all other articles covered by this tariff..... 8

631 Item 12. (a) On all car load shipments of articles covered by this tariff, moving under joint rates between points on the lines or portions of lines named below and points on other lines in Texas, the differentials shown above may be added for the distance traversed on such lines or portions of lines, regardless of the total distance such shipments may move, the provision that shipments must move 200 miles before differentials are added being waived:

Asherton & Gulf Railway.....Entire line.
Kansas City, Mexico & Orient Railway of Texas. West of San Angelo.
St. Louis, Brownsville & Mexico Railway.....South of Robstown.
San Antonio & Aransas Pass Railway.....South of Alice.

(b) Differentials, shown in Item No. 7, may also apply in same manner, as shown in Paragraph (a) of this item, on shipments moving locally between points on the following named lines or portions of lines:

Between stations on the San Antonio & Aransas Pass Railway, Alice and south; also between stations south of Alice and other stations on the San Antonio & Aransas Pass Railway.

Between stations on the St. Louis, Brownsville & Mexico Railway south of Robstown and other stations on that line, Robstown and north or east thereof.

Between points on the Asherton & Gulf Railway.

It was agreed that Exhibits Nos. 1, 2 and 3, attached to said original Petition, in Cause 34,832, as copied above, correctly state the maximum class and commodity interstate rates as prescribed in the order of the Interstate Commerce Commission of date July 7th, 1916, (exclusive of differential rates shown in said order as copied above, and exclusive of rates so shown for distances in excess of 351 miles), involved in this cause, and correctly state the rates published in "Texas Lines of Tariff 2-B" by the Plaintiffs for application to both interstate and intrastate shipments effective November 1st, 1916, and charged by Plaintiffs on Texas interstate and intrastate shipments since said date, and now so being charged by them, and which rates Plaintiffs propose to continue so to charge, except that differential rates have been published charged, and will be charged in addition to such rates, as shown above.

It was agreed that Exhibits Nos. 4 and 5 attached to said "First Amended Petition," filed in said cause 34,832, and copied above correctly state the Texas intrastate differential rates, for classes and commodities, as prescribed by the Railroad Commission of Texas

632 for *for* application to movements wholly within Texas moving within, out of, or into Texas Differential Territory as defined in said order of the Interstate Commerce Commission of date July 7th, 1916, involved in this cause, and the conditions so prescribed for the application thereof.

It was agreed that the distances stated in Plaintiffs' Second Supplemental Bill of Complaint in Equity 295 and in Defendants' "Reply and Answer" thereto are correct.

Defendants introduced and read in evidence an affidavit executed by H. D. Driscoll, March 29th, 1917, and the Exhibits attached thereto, which Affidavit and Exhibits read as Follows:

STATE OF TEXAS,
County of McLennan:

I, H. D. Driscoll, Secretary & Traffic Commissioner of the Waco Chamber of Commerce, Waco, Texas, do solemnly swear that

First. The Railroad Commission of Texas, on the eighth day of May 1916 in pursuance of notice and hearing, issued their circular Number 4-17, providing that the rate on said gravel, carloads, from Texand to locations on the San Antonio and Aransas Pass tracks in Waco, should be five dollars ($5.00) per car, and that on sand and gravel, carloads, from Texand to points in Texas other than Waco, the rate to be applied should be that applicable to the same commodity from Waco to the same points of destination except that where the point of destination is a non-competitive point, in which event the rate to be applied from Texand should be the Waco rate plus one dollar ($1.00) per car, and a certified, true and correct copy of said circular is attached hereto and marked as Driscoll's Exhibit Number 1.

Second. That on the 25th of September A. C. Fonda, as agent of the railroads serving Waco, Texas, published and filed with the Interstate Commerce Commission "Texas Lines' Tariff No. 2-B, I. C. C. No. 33" effective November the 1st, providing a different and higher basis of rates applicable to sand and gravel, carloads, from Texand to Texas points than a authorized and ordered by the Railroad Commission of Texas in such circular referred to in paragraph one.

Third. That the Potts-Moore Gravel Company is a corporation whose principal office is in Waco, Texas, is engaged in the
633 mining and shipping of sand and gravel in carload lots from Texand to points in Texas, and on February the 13th 1917, as attorney for said Potts-Moore Gravel Company, and in behalf of said company, I filed with the interstate Commerce Commission a complaint styled "Potts-Moore Gravel Company, Complainant, vs. San Antonio and Aransas Pass Railway Company, et al., Defendants," complaining of the rates on gravel and sand in carload lots from Texand, Texas to points in Texas common point territory on lines of the San Antonio and Aransas Pass Railway, The Missouri, Kansas and Texas Railway Company of Texas, International and Great Northern Railway Company, and Houston and Texas Central Railroad Company, moving wholly within the State of Texas, via

defendants' Lines of road, said rates being contained in Texas Lines' Tariff Number 2-B, A. C. Fonda's I. C. C. Number 33, items 1754 and 1755, as being excessive and unreasonable and in violation of section one of the Act to Regulate Commerce as amended, a true and correct copy of which complaint is hereto attached and marked as Driscoll's exhibit No. 2.

Fourth. That on the morning of March the 16th 1917, I sent a telegram to the Interstate Commerce Commission, Washington, D. C. via the Postal Telegraph Company, reading as follows:

"February thirteenth sent complain- Potts Moore Gravel Company vs. San Antonio and Aransas Pass sand and gravel Texand Texas to Texas Points. Please wire collect docket number assigned or if outside your jurisdiction wire advice that effect and return complaint."

a true and correct copy of which telegram is hereto attached and marked as Driscoll's exhibit No. 3.

Fifth. That the Interstate Commerce Commission retained said complaint until March the 16th, 1917, when the same was returned to me by said Interstate Commerce Commission, through its secretary, G. B. McGinty, accompanied by a letter of said date, stating that the Interstate Commerce Commission "cannot entertain a complaint against the local rates between points in the State of Texas," which letter accompanying said complaint was received by me through the United States mail on March the 19th, 1917, and such original letter as so received by me is attached hereto and marked as Driscoll's exhibit No. 4.

634 Sixth. That on March the 19th, 1917 at 4:55 P. M. a telegram was received by me from G. B. McGinty, Secretary, via Postal Telegraph Company, reading as follows:

"Your wire sixteenth respecting complaint sand and gravel rates. Complain- has been returned. See Letter."

Such original telegram as so received by me is attached hereto and marked Driscoll's exhibit No. 5.

Subscribed and sworn to before me, a Notary Public in and for McLennan County, Texas, this 29 day of March A. D., 1917.

Notary Public.

DRISCOLL'S EXHIBIT No. 1.

Railroad Commission of Texas.

Austin, Texas.

Circular No. 4977.

Amending Commodity Tariff No. 9-C.

(Hearing No. 1731, April 11, 1916.)

Austin, Texas, May 8, 1916.

In pursuance of notice and hearing in the above numbered cause, it is ordered by the Railroad Commission of Texas that Commodity Tariff No. 9-C, issued by this Commission to apply on Stone, Sand, Gravel, etc., in carloads, and effective June 1, 1916, be amended as follows:

Amend Item 12, Section 3 of Tariff, by cancelling Paragraph (*a*) thereof and substituting therefor the following:

"(*a*) Sand and Gravel, in carloads, from Texand to locations on San Antonio & Aransas Pass Tracks in Waco, $5.00 per car. When deliveries in Waco are on tracks of other lines, regular switching charges, for the distance handled by such other lines, shall be added to the charge of $5.00. This rate not to be used as a division or basis for division on shipments going beyond Waco.

"(*b*) On Sand and Gravel, in carloads, from Texand to points in Texas (other than Waco) the rate to be applied shall be
535 that applicable, to the same commodity, from Waco to the same point of destination; except that where the point of destination is a non-competitive point, the rate to be applied from Texand shall be the Waco rate plus $1.00 per car."

Effective June 1, 1916.

ALLISON MAYFIELD, *Chairman;*
WILLIAM D. WILLIAMS,
EARLE B. MAYFIELD,
Commissioners.

Attest:
E. R. McLEAN, *Secretary.*

I hereby certify that the above is a true and correct copy of Circular No. 4977, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of said Commission, at the city of Austin, this the 8th day of May, 1916.

E. R. McLEAN, *Secretary.*

DRISCOLL'S EXHIBIT No. 2.

Before the Interstate Commerce Commission.

POTTS-MOORE GRAVEL COMPANY, Complainant,

vs.

SAN ANTONIO AND ARANSAS PASS RAILWAY COMPANY, THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY OF TEXAS and C. E. Schaff, Receiver; Gulf, Colorado, and Santa Fe Railway Company of Texas, Saint Louis Southwestern Railway Company of Texas, International and Great Northern Railway Company and James A. Baker, Receiver; Houston and Texas Central Railroad Company, Defendants.

Complaint.

The petition of the above named complainant respectfully shows:

I.

That the Potts-Moore Gravel Company is a corporation incorporated under the laws of the State of Texas, with its principal office at Waco, Texas, engaged in the mining, grading, preparing, selling, and shipping of gravel and sand in carload lots at its plant at Texand, a suburb of Waco, Texas, located on the San Antonio and Aransas Pass Railway, three and six-tenths miles south of its freight depot in Waco, McLennan County, Texas.

II.

That the above named defendants are common carriers engaged in the transportation of property by railroad for hire, between points in the State of Texas, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February 4th, 1887, and of the acts amendatory thereof and supplementary thereto.

III.

That said defendants are parties to and concur in Texas Lines Tariff 2-B, A. C. Fonda's I. C. C. No. 33, which tariff in items 1758 and 1758 provide rates on gravel and sand carloads from Texand to Points in Texas Common Point Territory.

IV.

That such rates exacted by the defendants for the transportation of gravel and sand in carload lots from Texand, Texas to points in Texas Common Point Territory on Defendants' lines of road were

routes wholly within the State of Texas are excessive and unreasonable and in violation of section one of the Act of Regulate Commerce as amended, such rates being materially higher than those in effect prior to Nov. 1st, 1916.

Wherefore, your complainant prays that said defendants and each of them be required to answer the charges herein made and after due hearing and investigation an order be made commanding said defendants to cease and desist from charging such unjust and -reasonable rate- and that a further order be made fixing just and reasonable rates to be charged by the defendants for the transportation of gravel and sand cadloads from Texand, Texas, to points in Texas Common Point Territory on defendants' lines of road via routes wholly within the State of Texas, and that such other and further orders may be had as the Commission may deem necessary in the premises and as complainant's cause may appear to require.

637 POTTS-MOORE GRAVEL COMPANY.
R. J. POTTS, *President.*
——— ———, *Attorney for Complainant.*

115 North Fifth Street.

Dated at Waco, Texas, February 13, 1917.

DRISCOLL'S EXHIBIT No. 3.

Waco, Texas, March 16th, 1917.

Interstate Commerce Commission, Washington, D. C.:

February thirteenth sent complaint Potts-Moore Grave- Company vs. San Antonio and Aransas Pass Sand and Gravel Texand Texas to Texas points. Please wire collect docket number assigned or if outside your jurisdiction wire advice that effect and return complaint.

WACO CHAMBER OF COMMERCE.

DRISCOLL'S EXHIBIT No. 4.

Interstate Commerce Commission.

Washington, D. C., March 16th, '17.

Mr. H. D. Driscoll, Secretary & Traffic Commissioner, Waco Chamber of Commerce, Waco, Texas.

DEAR SIR: I am returning herewith ten copies of the complaint of the Potts-Moore Gravel Company, respecting the rates on gravel and sand from Texand, Texas, to points in Texas common point territory. The Commission cannot entertain a complaint against the local rates between points in the state of Texas.

638 I infer that the rates here complained of have been established by the carriers in compliance with the terms of our

order in the so-called Shreveport cases. These cases have been reopened by the Commission and assigned for rehearing at Dallas, Texas, beginning March 26th. One of the subjects for consideration in that hearing will be rates on sand and gravel between Shreveport and Texas points. The Commission will receive evidence relating to the reasonableness of rates on these commodities between Shreveport and Texas points or relating to the justification for maintenance of higher rates between Shreveport and Texas points than rates maintained locally within the State of Texas.

Respectfully,

(Sgd.) G. B. McGINTY, *Secretary.*

DAUSCOLL'S EXHIBIT No. 5.

21 D. S. S. 17 Collect 1 ex.
Washington, D. C., 5e1 p. m., Mar., 1917.

Waco Chamber of Commerce, Waco:

Your wire sixteenth complaint sand and gravel rates complaint has been returned see letter.

G. B. McGINTY, *Secy.*
4.55 p. m.

To the introduction of which affidavit of said witness Driscoll complainant excepted upon ground that same was irrelevant and that the order of the Interstate Commerce Commission cannot be attacked by evidence other than that before the Commission and on which same was based.

Defendants introduced and read in evidence the following letter of date December 8th, 1916, written by the Marshall Manufacturing Co. of Marshall, Texas, to the Interstate Commerce Commission, and the reply thereto by G. B. McGinty, Secretary of said Commission of date Dec. 13th, 1916, which letters read, respectively as follows:

339 Washington, D. C., December 13, 1916.

The Marshall Manufacturing Company, Marshall, Texas.

GENTLEMEN: In reply to your letter of December 8, concerning application of minimum weights on fruit and vegetables packages, the Commission wired you as follows:

Commission will not furnish tariff information for use prospective traffic. Such information should be sought from carriers. If controversy with carriers concerning interpretation of tariffs Commission will rule if submitted jointly. If only intrastate traffic involved Commission has no jurisdiction. Writing."

In amplification of the above wire, you are advised that the Commission has found it impracticable to attempt to furnish tariff information for use in connection with future shipments. Neither will the Commission furnish an interpretation of a tariff upon an ex parte presentation by a shipper. Where a carrier and a shipper or

fail agree as to the proper interpretation of application of a tariff, and a ruling by the Commission is desired, the matter should be submitted on a joint stipulation of facts signed by the representatives of both parties. On such a submission the Commission will give the matter prompt attention.

It is noted that you refer in your communication to the fact that you contemplate making some shipments to Austin, Texas. Traffic between Marshall and Austin would not move outside of the State of Texas, and would not be subject to the jurisdiction of this Commission. Such transportation is subject to the jurisdiction of the Railroad Commission of Texas, at Austin, Texas.

Respectfully,

G. B. McGINTY, *Secretary.*

To the introduction of which affidavit of said Driscoll and exhibits attached complainants excepted on the ground that the same were irrelevant and upon the further ground that the order of the Interstate Commerce Commission herein involved cannot be attacked by evidence other than the evidence introduced before the Commission and upon which same was based.

640 Marshall, Texas, December 8th, '16.

Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: We would thank you to advise us with reference to rates and minimums as carried in Texas Line Tariff 2B. On page 283 Rate section 37 Items 2670 and 2675. Under this a minimum of 30,000 is required and our points running from 200 to 250 miles takes a rate of 19 cents.

It is impossible to get 30,000 of fruit and vegetable packages in any car, and we have been advised by one Railroad that if this is the case, that we can exact two cars if the minimum cannot be gotten in one car—this is the point we would like settled. This party claims that under Western Classification named, cannot be gotten in one car, then two cars will have to be furnished, and if over the minimum is put in the two cars actual weight will be charged on the shipment moving in two cars, if over the minimum of 30,000 lbs.

We have a large amount of these Fruit and Vegetable Packages sold to Austin, Texas, shipments of which will start to moving soon, so would thank you to wire us at our expense how you interp-et this minimum.

Thanking you in advance for your promptness in the matter, we are,

Yours very truly, THE MARSHALL MFG. CO.

———— ————, *Secty.*

To introduction of which complainants excepted on ground that same was irrelevant and that order of the Interstate Commerce Commission cannot be attacked by evidence other than that introduced before the Commission.

Defendants introduced and read in evidence an affidavit executed by J. A. Stephenson and the Exhibits attached thereto, which Affidavit and Exhibits read as follows:

641 Marshall, Texas, December 8th, '16.

Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: We would thank you to advise us with reference to rates and minimums as carried in Texas Line Tariff 2B. On page 263 Rate section 37 Items 2670 and 2675. Under this a minimum of 30,000 is required and our points running from 200 to 250 miles takes a rate of 19 cents.

It is impossible to get 30,000 of fruit and vegetable packages in any car, and we have been advised by one Railroad that if this is the case, that we can exact two cars if the minimum cannot be gotten in one car—this is the point we would like settled. This party claims that under Western Classification named, cannot be gotten in one car, then two cars will have to be furnished, and if over the minimum is put in the two cars actual weight will be charged on the shipment moving in two cars, if over the minimum of 30,000 lbs.

We have a large amount of these Fruit and Vegetable Packages sold to Austin, Texas, shipments of which will start to moving soon, so would thank you to wire us at our expense how you interp-et this minimum,

Thanking you in advance for your promptness in the matter, we are,

Yours very truly,

THE MARSHALL MFG. CO.
—— ——, *Secty.*

Defendants introduced and read in evidence an affidavit executed by J. A. Stephenson and the Exhibits attached thereto, which Affidavit and Exhibits read as follows:

642 STATE OF TEXAS,
County of Tarrant:

I, J. A. Stephenson, a member of the firm of M. Sansom & Co., 102 Exchange Building, Fort Worth, Texas, do solemnly swear that on the 9th day of February, A. D., 1917, said firm addressed a letter to the Interstate Commerce Commission, Washington, D. C., and deposited the same in the United States Mail at Fort Worth, Texas, a true copy of which letter is hereto attached and marked Sansom's Exhibit No. 1; and that on about the 25th day of February, 1917, said firm received through the United States Mail at Fort Worth, Texas, what purports to have been a letter signed by G. B. McGinty, Secretary of the Interstate Commerce Commission of date, February 21st, 1917, which letter as so received, is hereto attached and marked as Sansom's Exhibit No. 2.

J. A. STEPHENSON.

Subscribed and sworn to before me this the 27th day of March, A. D., 1917.

——— ———,

Notary Public, Tarrant County, Tex.

SANSOM EXHIBIT No. 1.

February 9th, 1917.

Chairman, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: We enclose an original paid expense bill covering the movement of car of cottonseed cake from Ft. Worth, Texas to Miami, Tex. This shipment moved from Ft. Worth via Ft. W. & D. C., Amarillo c/o Panhandle & Santa Fe Ry. You will note from the attached paid expense bill that the railroad company charged us on this shipment with thru rate of 26 cent- per cwt. The entire mileage covered by this shipment was 416.2 miles, being made up as follows:

Ft. W. & D. C.—Ft. Worth to Amarillo..... 336. miles

643

Panhandle & Santa Fe—Amarillo to Miami..... 80.2 miles

Total ..... 416.2 "

The tariff under which this shipment moved shows a very great discrimination agianst Fort Worth for interstate shipments. For instance: Southwestern Line Tariff 85-A. We quote you from this tariff some rates covering the same products from points in Oklahoma to Miami, Texas.

Ardmore, Okla. to Miami, Texas, rate on cottonseed cake is 20 cents per cwt., Minimum weight 30,000 #. The distance from Ardmore, Okla., to Miami, Texas is 453.2 Miles.

The same tariff quotes rate from Oklahoma City, Okla. to Miami, Texas of 15 cents per cwt., distance 352.2 miles.

From Norman, Okla. to Miami, Texas, 16 cents per cwt., distance 372.1 miles.

I believe that our Fort Worth market should be able to compete on our Texas business against interstate shipments. You will note from the above that our rate on cottonseed cake is almost prohibitory to this point. The rate from Fort Worth to Miami is higher than Fort Worth to Kansas City, St. Louis and Memphis.

The average mileage that we have quoted you above from the three points in Oklahoma to Miami, Texas is 392 miles; the average rate per cwt. is 17 cents from Oklahoma points to Miami, Texas.

We believe that we should have a rate from Fort Worth to Miami not to exceed 17½ cents per cwt. On this basis our rate would be approximately on a basis of our interstate rates.

We should like very much to have the Commission consider the proposition most seriously and advise us at your earliest convenience. Thanking you very much for a reply, we are

Yours truly,

J. A. STEPHENSON,
General Manager.

644 SANSOM'S EXHIBIT No. 2.

Washington, February 21, 1917.

M. Sansom & Company, 102 Exchange Building, Forth Worth, Texas.

GENTLEMEN: The receipt is acknowledged of your letter of February 9, 1917, alleging an excessive rate applied for the transportation of a shipment of cotton seed cake from Fort Worth to Miami, Tex., moving via an intrastate route. You make comparison of the rate charged with rates contemporaneously in force to that destination from points in Oklahoma.

The rate against which you complain appears to be applicable on shipments moving intrastate in Texas. This Commission has no jurisdiction over transportation performed wholly within the confines of a single state. Therefore, the question as to the propriety of the rate from Ft. Worth to Miami via the route shown is not within the jurisdiction of this Commission but would seem to come under the authority of the Railroad Commission of Texas, Austin, Texas.

Your freight bill is herewith returned.

Respectfully,

G. B. McGINTY, *Secretary.*

To the introduction of which affidavit and exhibits of J. A. Stephenson, complainants excepted upon grounds that same is irrelevant and incompetent and that an order of the Interstate Commerce Commission can not be attacked by evidence other than that before the Interstate Commerce Commission and on which same was based.

645 *Testimony of Gentry Waldo.*

Defendants read in evidence the following portions of the testimony of Gentry Waldo, a witness for the Plaintiffs, given before the Interstate Commerce Commission, at Houston, Texas, December 17th, 1915, in the proceedings in which the order of July 7th, 1916 involved in this case was made to-wit.

I will offer as Exhibit Number 2 the proposed tariff of class rates of which there are two comparisons, the first showing a comparison of the rates suspended in I. & S. 710, the other a comparison with the present Railroad Commission of Texas rates which are complained of as discriminating against Shreveport.

In increasing our rates for the greater distances above the minimum distance of 10 miles we started with 5th Class. We used 5th Class at 100 per cent in arriving at our carload rates.

We have increased the minimum rate on 5th Class from 6 to 7 cents, Class A 7 to 8 cents, Class B is the same, Class C 5 to 6 cents, Class D both 5 cents, Class E 4 to 5 cents, as we felt that 5 cents is as low as we thought we ought to be called upon to go in making any carload class rate.

By referring to the comparison of the proposed with the present Texas common point rates it will be seen if both increases and reduces the Texas common point rates, because we have used a uniform method of progression and they have used practically no method at all, as has been admitted by the Commission itself.

For instance, 5th Class proposed is one cent lower than the present 5th Class from 30 to 59. It is the same then up to 62 miles, and it can be seen by a glance at the two columns that there are differences all the way through.

At 250 miles where the present maximum rate is reached our proposed 5th Class is one cent lower than the present 5th Class, 43 cents as compared to the present 44 cents.

346 That same condition prevails all through 5th, A, B and C; there is a difference in Class D. The rates are generally higher than the present rates, although in some instances the same and in a few instances lower.

They are generally higher on Class E, which is very low in the Texas Commission scale. But, as I stated, we were guided chiefly by the present rates which we consider very nearly reasonable for the carloads up to the maximum distance. About the only real change that we made in that was to adopt a uniform method of increasing our rates instead of the haphazard one that is used in the present scale.

Commissioner Hall: Mr. Waldo, the proposed rates under the legend A, are those sought from the Texas Commission, are they in the proceeding to which reference has been made in this case?

Mr. Waldo: No, sir; they were not. We had in our application to the Texas Commission—we were in the same difficulty that we were in the supplemental Shreveport case, the hearing at Shreveport. We had not arrived at these cost figures until just before we went into the hearing. We explained them at the hearing and introduced a tentative tariff to show what the increases should be up to about 300 miles based on that.

Commissioner Hall: Well, to avoid any confusion in the record, the interstate rates now under suspension in I. & S. 710 are, in our parlance, ordinarily referred to as proposed rates; proposed but under suspension?

Mr. Waldo: Yes, sir.

Commissioner Hall: You do not mean these rates when you say "A. Proposed rates"?

Mr. Waldo: No.

Commissioner Hall: But you mean something else?

Mr. Waldo: I will refer to that from now on as the substituted rates.

Commissioner Hall: When and how and where were these proposed as a substitute—in this proceeding?

Mr. Waldo: Now for the first time.

647 Commissioner Hall: They are now proposed today?

Mr. Waldo: Yes, sir; in justification—I could hardly say in justification of the rates under suspension, because we find we were in error in asking for those rates from the Texas Commission or in admitting they were reasonable to the Interstate Commerce Commission in the Shreveport hearing.

Commissioner Hall: Then, as I understand what is meant under "A Proposed rates" on the two sheets of the Exhibit 2, are rates which are now offered as a substitute for those suspended in I. & S. 710?

Mr. Waldo: Exactly, yes sir.

Commissioner Hall: And to the extent that these rates depart from those suspended in I. & S. 710, the carriers are not undertaking to justify what is suspended in 710, is that correct?

Mr. Waldo: That is correct, yes, sir.

The increases over the present class rates in Texas, carload, are chiefly beyond 200 miles, for the greater distances, which we will undertake to justify with more testimony.

Mr. Waldo: We submit that that justifies our application for increases in rates for shorter distances.

Commissioner Hall: The Commission made a supplemental order and pursuant to that there was a tariff filed then on protest made the tariff was suspended in I. & S. 710. The burden is upon the carriers to justify that tariff—interstate tariff. Now, they come in here and as to some, at least, of what appears in that tariff they say they do not justify it but they propose to substitute something for it, and I understand this witness to be explaining that substitute and justifying the substitute instead of justifying the tariff suspended.

Mr. Gray: All right; I withdraw the objection.

Mr. Garwood: The witness is merely undertaking to show that for the short distances in the tariffs suspended the rates there provided are really lower than the facts justify and that for the short distances they ought really to be increased, and that is the purpose of this substitute tariff.

648 Mr. Garwood: Before leaving that tariff, Mr. Waldo, as I understand the distance between the suggested tariff that you have proposed here and that under suspension, it is that you undertook to show that higher rates for shorter distances would be justified than are in the tariff under suspension?

Mr. Waldo: Yes, sir.

Mr. Garwood: That while you, of course, justify the tariff under suspension in its general feature your position is that the facts demand an increase in these rates as indicated by you for the shorter distances by reason of the fact that the terminal points are greater as shown by investigation of that matter as outlined by you?

Mr. Waldo: Yes; that is exactly it. We think that our showing as to station costs fully justifies a substantial increase in short distance rates; that the rates for longer distances in the suspended tariff in most instances are approximately reasonable, and we feel that the

method of progress that we have adopted, increasing the rates for greater distance is uniform and fully justified.

Commissioner Hall: Just one moment. Have you a comparison also between the rates now proposed here today and the rates which you recently proposed to the Texas Commission?

Mr. Waldo: Those that we proposed to the Texas Commission were almost exactly the same as those under suspension, Mr. Commissioner, except that our rates proposed to the Texas Commission 1st Class was $1.08 for over 400 miles. This steps from 209 to 450 miles.

Commissioner Hall: Those will be found in the record in the Texas case?

Mr. Waldo: Yes, sir.

I submit as my next exhibit a tariff of miscellaneous commodities.

I have been reminded before going on with this tariff that I have overlooked calling attention to the fact that we have introduced in this exhibit of class rates only the rates for common point territory; no mention is made on that exhibit of differentials. It is submitted as a tariff for application within common point territory, and we believe, as was developed in some testimony yesterday or the day before,
that the differential, like the common point rate, stops a little
649 too soon. The maximum 1st Class differential should be from 30 to 33 cents instead of 25 cents. It stops at 260 miles, whereas the Galveston, Harrisburg & San Antonio has a haul of 620 miles in differential territory that is practically a service from San Antonio to El Paso; that of the Texas & Pacific is less, but we think with that length of differential haul the differential scale should be run out to something over 260 miles, nearer 350 miles I should say, up to about 33 cents 1st Class rate.

Commissioner Hall: By what carriers are those proposed at this hearing? By all carriers operating in Texas?

Mr. Waldo: By practically all of them, yes, sir; by all of the defendants in this case.

Commissioner Hall: By all of the respondents in the I. & S. cases?

Mr. Waldo: Yes, sir; by all the respondents and defendants in these cases.

Commissioner Hall: Well one of these cases embraces every carrier in Texas, the last one brought, does it not?

Mr. Atkins: We think so; all we knew of.

Mr. Garwood: Was your Honor's question as to what carriers were parties to the application to the Railroad Commission of Texas?

Commissioner Hall: No; there are today proposed the substitute rates?

Mr. Garwood: Yes.

Commissioner Hall: And I am asking who proposed them?

Mr. Garwood: Oh, yes.

Commissioner Hall: I understand it is all the carriers' parties to these proceedings, is that it?

Mr. Waldo: Yes, sir.

I will explain, Mr. Commissioner, that we understand this case to be only—having disposed of the two I. & S. cases, that the case now under discussion is only the complaint by Shreveport against the

discrimination caused by the application of lower rates be-
650 tween Texas points and between Shreveport and Texas points.
We are offering these as rates that we think proper and reasonable to substitute for those now in effect between Shreveport and Texas points and for application further as the Commission may see fit to order.

Commissioner Hall: Then if you voice the carriers, I understand it is not intended to justify the tariff under suspension in 710, but the carriers' position is that those tariffs should be canceled, is that right?

Mr. Waldo: Yes sir.

Mr. Garwood: And the others substituted instead?

Commissioner Hall: Yes.

651 *Testimony of O. D. Hudnall.*

Defendants introduced and read in evidence the following affidavit executed by O. D. Hudnall, and filed in No. 295, to-wit:

(1) That I am in the employment of the Railroad Commission of Texas in the capacity of rate expert, and have been engaged in such employment for 12 years, and that the duties of such employment require me to be, and I am, familiar with the rates, tariffs, rules, and regulations prescribed by the Railroad Commission of Texas from the time for application to movement of intrastate traffic in Texas, and to be familiar with, and I am familiar with the various tariffs, rates, rules, and regulations applicable to the movement of interstate traffic between various points, including such traffic between Shreveport, Louisiana and Texas points, as established and applied by the different carriers operating between such points or participating in such tariffs, rates, rules or regulations, and that I am familiar with the scales of rates prescribed by the Interstate Commerce Commission in 23 I. C. C. 21 and 34 I. C. C. 473 et seq. That prior to such employment I had — experience with matters and questions mentioned immediately above.

(2) That I have examined the scales of rates, tariffs, rules and regulations referred to in the attached exhibits and therefrom have correctly compiled the data shown on each of the exhibits attached hereto and marked as Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16, and that each of the facts stated in each of such exhibits are true and correct.

Said affidavit was filed April 4, 1917. To the introduction of which plaintiff objected on the ground that same was not before the Interstate Commerce Commission before it made its order of July 7, 1916, and said affidavit be considered for the purpose of in any way affecting said order.

652 Hudnall's Exhibits 1, 2, and 3, referred to in his affidavit above, are copied above as a part of Defendants' "First Amended Answer." Defendants read in evidence Hudnall's Exhibit 5, referred to in his affidavit above, as follows:

Comparison of Rates Complained by Shreveport and Found to Be Unreasonably High in Cause No. 8418 With Rates Authorized by the Order in No. 8418 and Put into Effect by Texas Lines' Tariff No. 2-B.

NOTE.—The first column shows stations grouped according to railroads; Second column shows distance (Joint or Single Line) between Shreveport, Louisiana, and such stations; The figures at the head of the remaining column-shows Classes; The first line as to each group of stations shows the rates complained of and found to be unreasonably high by the I. C. C. and the second line as to each group of towns shows the rates attempted to be authorized by the order in No. 8418 and put into effect by Texas Lines' Tariff No. 2-B.

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
(R. S. & P. Ry.):											
Westella	J437.2										
Hermleigh	J448.1										
Snyder	J459.8	105	92	74	71	54	58	51	40	28	21
Dermott	J470.5	114	97	80	69	57	59	46	40	34	28
Fluvanna	J478.4										
(A. & S. Ry.):											
Guion	J404.6										
Bradshaw	J407.5										
Chapman	J412.2										
Winters	J418.2	105	92	74	71	54	58	51	40	28	21
Hatchel	J425.9	114	97	80	69	57	59	46	40	34	28
Ballinger	J434										
Anson	J405.5										
Radium	J418.1										

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Comparison of Rates Complained by Shreveport, &c.—Continued.

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
(To Ft. W. & R. G. Ry.):											
Brady	J409.2										
Niblock	J413.0										
Whiteland	J419.7										
Lightner	J427.1	105	92	74	71	54	58	51	40	28	21
Callan	J434.0	114	97	80	69	57	59	46	40	34	28
Scalp Creek	J438.5										
Menard	J445.7										
(Ft. W. & D. C. Ry.):											
Evans	J402.2										
Quanah	J408.5	105	92	74	71	54	58	51	40	28	21
Acme	J413.4	114	97	80	69	57	59	46	40	34	28
Agatite	J414.9										
653 (Wichita Valley Ry.):											
Joslett	J405.2										
Haskell	J411.0										
McConnell	J414.0										
Penick	J411.0	105	92	74	71	54	58	51	40	28	21
Anson	J404.7	114	97	80	69	57	59	46	40	34	28
Capron	J413.4										
Sagerton	J420.8										

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Sagerton	J420.8										
(K. C. M. & O. Ry.):											
Odell	J405.5										
Medicine Mound	J402.2										
Margaret	J412.6										
Crowell	J419.2										
Foard City	J427.0										
Truscott	J436.4										
Benjamin	J449.0										
Knox City	J446.2										
O'Brien	J443.5										
Rochester	J438.7										
Rule	J429.2										
Sagerton	J420.8										
Pastura	J429.7										
Plasterco	J425.6	105	92	74	71	54	58	51	40	28	21
McCaulley	J430.0	114	97	80	69	57	59	46	40	34	28
Sylvester	J434.9										
Langworth	J435.4										
Paret	J423.1										
Shaufler	J426.1										
Maryneal	J438.1										
Blockwell	J451.7										
Ft. Chadbourne	J458.2										
Bronte	J466.0										
Beverley	J469.5										
Tennyson	J476.2										
Woodland	J474.8										
San Angelo	J458.8										

Comparison of Rates Complained by Shreveport, &c.—Continued.

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
(P. & S. Ry.):											
Gannon	J430.0										
Bernecker	J435.2										
Pyron	J441.8										
Hermleigh	J448.4										
Chorn	J455.4	105	92	74	71	54	58	51	40	28	21
Snyder	J459.8	114	97	80	69	57	59	46	40	34	28
Brand	J465.6										
Dermott	J470.2										
Fillerville	J476.5										
(G. C. & S. F. Ry.):											
Talpa	J407.0										
Benoit	J415.2										
Ballinger	J423.0										
Rowena	J431.7										
Miles	J440.2										
Harriet	J449.2										
San Angelo	J458.3	105	92	74	71	54	58	51	40	28	21
Lowake	J446.8	114	97	80	69	57	59	46	40	34	28
Elm Valley	J454.0										
Paint Rock	J456.4										
Silver Valley	J403.6										
Novice	J409.2										
Goldsboro	J409.8										
Lawn	J403.2										

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Buffalo Gap	J402.2										
View	J408.5										
Comart	J414.0										
Blair	J420.2										
Toland	J425.2										
Herndon	J430.3										
Tacific	J429.5										
654 Satuit	J429.5	105	92	74	71	54	58	51	40	28	21
Nelin	J406.3	114	97	80	69	57	59	46	40	34	28
Niblock	J412.9										
Whiteland	J419.6										
Melvin	J425.2										
Pascha	J431.0										
Welview	J433.3										
Eden	J441.1										

(I. & G. N. Ry.):

Heafer	J409.7	
Van Ormy	J415.1	
Kirk	J417.7	
Atascosa	J420.7	
Lytle	J425.1	.....
Breckenridge	J462.3	
Natalia	J430.1	
Medwood	J431.6	
Devine	J434.5	

Comparison of Rates Complained by Shreveport, &c.—Continued.

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
(S. A. & A. P. Ry.):											
Riverside Park	J404.8										
Sulphur Baths	J405.6										
Clorine	J405.1										
Bergs	J408.3										
Southton	J411.5										
Emendorf	J417.8										
Sasprince	J420.4										
Michelson	J421.3										
Calaveras	J423.2										
Elesco	J425.1										
Labatt	J426.1										
Waheand	J427.3										
Floresville	J432.1	105	92	74	71	54	53	51	40	28	21
Poth	J435.1	114	97	80	69	57	59	46	40	34	28
Falls City	J427.6										
Hobson	J424.8										
Ruby	J419.5										
Karnes City	J416.9										
Kenedy	J416.7										
Runge	J401.0										
Green	J416.7										
Burnell	J421.7										
Pettus	J426.8										
Tuleta	J428.1										
Normanna	J426.1										

Berville	J415.5										
Vougeen	J421.6										
Skidmore	J426.8										
Clara	J429.4										
Papalete	J434.1										
St. Paul	J436.3										
Sinton	J431.4										
Taft	J439.5	105	92	74	71	54	53	51	40	28	21
Gregory	J447.3	114	97	80	69	57	59	46	40	34	28
Portland	J450.7										
Corpus Christi	J456.9										
McCampbell	J458.4										
Ingleside	J459										
Aransas Pass	J456.9										
Estes	J462.7										
Rockport	J468.1										

(St. L. B. & M. Ry.):

Ewelder	J428.3										
Cranell	J423.5										
Woodsboro	J417.2										
La Rosa	J415.0	105	92	74	71	54	53	40	28	21	51
Refugio	J411.2	114	97	80	69	57	59	40	34	28	46
Greta	J402.8										
Prague	J407.4										
Pt. O'Conner	J416.5										

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655 NOTE 2.—154 Stations in Texas common point territory are shown in the above statement and the mileage covered is 900.6 miles, as follows:

Roscoe, Snyder and Pacific Railway	49.2
Abilene & Southern Railway	62.5
Fort Worth & Rio Grande Railway	36.5
Fort Worth & Denver City	12.6
Wichita Valley Railway	43.4
Kansas City, Mexico & Orient Ry. of Texas	229.0
Panhandle & Santa Fe Railway	55.2
Gulf, Colorado and Santa Fe Railway	173.4
International and Great Northern Railway	24.8
San Antonio & Aransas Pass Railway	180.2
St. Louis, Brownsville & Mexico Railway	33.8

To all these stations and to all of this mileage; in other words, to all stations on 900.6 miles of line in Texas common point territory, the effect of the 100 order was to increase the rate on seven out of ten classes, on one class the rate remains unchanged, and on two classes they are reduced. Amounts and percentages are as follows:

	Increase.	Decrease.	Per cent.
First class	9 cts.	..	08.57
Second class	5 "	..	05.43
Third class	6 "	..	08.11
Fourth class	..	2 cts.	02.82
Fifth class	3 "	..	05.56
Class A	1 "	..	01.72
Class B	..	5 "	09.80
Class C	0	0	00.00
Class D	6 "	..	21.43
Class E	7 "	..	33.33

Average net increase: 7.15 per cent.

NOTE 3.—The I. C. C. found that the 5th Class rate is the rate under which the "largest amount of carload traffic" moves; it will be noted that there is an increase of 3 cents per 100 pounds for distances named authorized over the rates complained of and condemned by the I. C. C., or a per centage increase of 5.5%. Class C remains the same.

No finding was made as to the respective proportions of carload traffic moving under the other car-load rates, but in only one instance is there a decrease,—9.8%, in class B, while in the other classes there is an increase as follows:

Class A,—1.72% increase; Class D,—21.42% increase, Class E, 33 1/3% increase.

656 Defendants introduced and read in evidence Hudnall's Exhibit No. 6 referred to in the foregoing affidavit which exhibit reads as follows:

Exhibit No. 6.

Comparison of Rates in Effect to Points in Differential Territory Named and Complained of by Shreveport and Condemned by I. C. C. with Rates Prescribed by I. C. C. in No. 8418 and Now in Effect to Same Points.

Note 1.—The attached statement is a comparison of Class Rates, between Shreveport and Texas points named in Texas differential territory, in effect at the time of the hearing on Shreveport's last complaint in December 1915, with those put in by the I. C. C. order of July 7, 1916.

321 stations in Texas differential territory are shown, and the mileage covered is 1700.0 miles, as follows:

Wichita Valley Railway	67.6
Fort Worth & Denver City Railway	110.9
Chicago, Rock Island & Gulf Railway	274.3
Panhandle & Santa Fe Railway	124.3
Gulf, Colorado & Santa Fe Railway	42.4
Artesian Belt Railroad	42.7
Asherton & Gulf Railway	32.1
Galveston, Harrisburg & San Antonio Railway	216.1
San Antonio, Fredericksburg & Northern Ry.	23.8
International & Great Northern Railway	117.0
San Antonio & Aransas Pass Railway	150.0
San Antonio, Uvalde & Gulf Railway	315.0
Rio Grande & Eagle Pass Railway	25.8
Texas Mexican Railway	144.0
St. Louis, Brownsville & Mexico Railway	14.0
	1700.0

To all of these stations and to all of this mileage; in other words to all stations on 1700.0 miles of line in Texas differential territory, the effect of the I. C. C. order, on some of the classes, was to make the rates the same or greater than the rates complained of by Shreveport.

In every case, shown in this Statement, the First Class rate and the rates on Classes D and E, put in by the I. C. C. order
657 are the same or greater than the First Class and Classes D & E rates complained of.

The largest increase, shown in this Statement, appears at Higgins, Texas, on the Panhandle & Santa Fe Railway, as follows:

	Increase.	Decrease.	Per cent.
First class	24 cts.	..	20
Second class	15 "	..	14.09
Third class	15 "	..	17.04
Fourth class	0	..	00.00
Fifth class	10 "	..	15.87
Class A	7 "	..	10.30
Class B	..	1 ct.	01.67
Class C	4 "	..	08.33
Class D	9 "	..	25
Class E	9 "	..	31.03

Average net increase: 13.99 per cent.

NOTE 2.—First column shows stations grouped by railroads; second column shows mileage (Joint or Single Line); figures and letters at the head of the remaining colum-s indicate Classes. The first line under each town shows rate in effect and complained of by Shreveport at hearing December 17, 1915, and condemned by I. C. C. as being unreasonable high, and second line under each town shows rate attempted to be authorized in order in No. 8418 and now in effect.

658 Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
Wichita Valley Ry.:											
Brandenberg	J427.5	108	95	77	74	56	60	53	41	29	22
		116	99	81	50	58	60	47	41	35	29
Aspermont	J437.8	108	95	77	74	56	60	53	41	29	22
		116	99	81	70	58	60	47	41	35	29
Swenson	J444.2	110	97	73	75	67	62	54	42	32	23
		117	99	81	70	58	60	47	41	35	29
Peacock	J450.7	110	97	78	75	57	61	54	42	30	23
		118	100	82	70	58	60	47	41	35	29
Oriana	J454.5	111	97	78	75	58	62	55	43	31	24
		118	100	82	70	58	60	47	41	35	29
Jayton	J464.5	111	97	78	75	58	62	55	43	31	24
		119	101	83	71	58	61	47	41	35	29
Gerard	J474.4	112	98	79	76	58	62	55	43	31	24
		120	102	84	72	59	62	48	42	36	30

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Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
Wichita Valley Ry.—*Cont'd:*											
Spur	J488.2	115	101	82	78	60	65	56	45	32	25
		121	103	85	73	60	69	48	42	36	30
F. W. & D. C. Ry.:											
Goodlet	J417.2	108	95	77	74	56	60	53	41	33	22
		116	99	81	70	58	60	47	41	35	29
Kirkland	J428	108	95	77	74	56	60	53	41	29	22
		116	99	81	70	58	60	47	41	35	29
Washburn	J537.8	125	111	92	87	66	72	62	51	38	31
		127	109	91	79	65	68	53	46	39	32
Pullman	J545.4	125	111	92	87	66	72	62	51	38	31
		128	110	92	80	65	58	53	48	39	32
Amarillo	J552.4	125	111	92	87	66	72	62	51	38	31
		128	110	92	80	65	58	53	46	39	32
Cleffside	J559.0	125	111	92	87	66	72	62	51	38	31
		129	111	93	81	66	69	54	47	40	33
659 Gentry	J563.8	125	111	92	87	66	72	62	51	38	31
		130	112	94	82	66	69	54	47	40	33
Boden	J574.8	125	111	92	87	66	72	62	51	38	31
		131	113	95	89	67	70	55	48	41	34

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		131	118	95	83	67	70	55	48	41	34
Ady	J581.7	125	111	92	87	66	72	62	51	38	31
		131	118	95	83	67	70	55	48	41	34
Gross Spur	J583.1	125	111	92	87	66	72	62	51	38	31
		131	118	95	83	67	70	55	48	41	34
Tuscon	J588.9	125	111	92	87	66	72	62	51	38	31
		132	114	96	84	67	70	55	48	41	34
Magenta	J593.2	125	111	92	87	66	72	62	51	38	31
		132	114	96	84	67	70	55	48	41	34
Murdo	J599.1	125	111	92	87	66	72	62	51	38	31
		133	115	97	85	68	71	56	49	42	35
Channing	J604.7	125	111	92	87	66	72	62	51	38	31
		134	116	98	86	86	71	56	49	42	35
Duncan	J612.8	125	111	92	87	66	72	62	51	38	31
		134	116	98	86	68	71	56	49	42	35
Hartley	J619.7	125	111	92	87	66	72	62	51	38	31
		135	120	101	89	71	74	59	52	45	38
Twist	J629.5	125	111	92	87	66	72	62	51	38	31
		135	120	101	89	71	74	59	52	45	38
Dalhart	J634.1	125	111	92	87	66	72	62	51	38	31
		139	120	101	87	71	74	59	52	45	38

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
C. R. I. & G. Ry.:											
Amarillo	J552.4	125	111	92	87	66	72	62	51	38	31
		128	110	92	80	65	68	53	46	39	32
Royal	J560.7	125	111	92	87	66	72	62	51	38	31
		129	111	93	81	66	69	54	47	40	33
Yarnall	J569.5	125	111	92	87	66	72	62	51	38	31
		130	112	94	82	66	69	54	47	40	33
Conway	J578.1	125	111	92	87	66	72	62	51	38	31
		131	113	95	83	67	70	55	48	41	34
Lark	J586.4	125	111	92	87	66	72	62	51	38	31
		133	115	97	85	67	71	56	49	42	35
Groom	J593.7	124	110	91	86	65	71	61	50	37	30
		133	115	97	85	67	71	56	49	42	35
Boydston	J599.1	124	110	91	86	65	71	61	50	37	30
		133	115	97	85	67	71	56	49	42	35
Jericho	J605.1	124	110	91	86	65	71	61	50	37	30
		134	116	96	86	68	71	56	49	42	35
Rockledge	J610.8	124	110	91	86	65	71	61	50	37	30
		134	116	96	86	68	71	56	49	37	30
660 Alanreed	J617.1	122	108	89	85	64	69	61	49	37	30
		139	120	101	89	71	74	69	52	45	38

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		139	120	101	89	71	74	59	52	45	38
McLean	J625.8	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	69	52	45	38
Ramsdell	J636.3	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Lela	J642.5	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Shamrock	J648.5	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Fuller	J659.1	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Benonine	J663.1	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Soney	J558.6	125	111	92	87	66	72	62	51	38	31
		129	111	93	81	66	69	54	47	40	33
Rushland	J565.7	125	111	92	87	66	72	62	51	38	31
		130	112	94	82	66	69	54	47	40	33
Wildorado	J573.7	125	111	92	87	66	72	62	51	38	31
		131	113	95	83	67	70	55	48	41	34
Everett	J581.7	125	111	92	87	66	72	62	51	38	31
		131	113	95	83	67	70	55	48	41	34

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
C. R. I. & G. Ry.—*Cont'd:*											
Vega	J586.9	125	111	92	87	66	72	62	51	38	31
		132	118	96	84	67	70	55	48	41	34
Ontario	J588.6	125	111	92	87	66	72	62	51	38	31
		132	114	96	84	67	70	55	48	41	34
Adrian	J600.5	125	111	92	87	66	72	62	51	38	31
		133	115	97	85	68	71	56	49	42	35
Glenrio	J624.0	125	111	92	87	66	72	62	51	38	31
		135	120	101	89	71	74	59	52	45	38
Mexico Division:											
Dalhart	J634.1	125	111	92	87	66	72	62	51	38	31
		139	120	101	89	71	74	59	52	45	38
Chamberlin	J643.3	125	111	92	87	66	72	62	51	38	31
		139	120	101	89	71	74	59	52	45	38
Conlen	J653.3	125	111	92	87	66	72	62	51	38	31
		139	120	101	89	71	74	59	52	45	38
Stratford	J675.4	125	111	92	87	66	72	62	51	38	31
		144	122	103	90	72	75	59	52	45	38
Stevens	J675.4	125	111	92	87	66	72	62	51	38	31
		144	122	103	90	72	75	59	52	45	38

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661 Rehm	J643.3	125	111	92	87	66	72	62	51	38	31
		139	120	101	89	71	74	59	52	45	38
Middlewater	J655.4	125	111	92	87	66	72	62	51	38	31
		139	120	101	89	71	74	59	52	45	38
Romero	J667.1	125	111	92	87	66	72	62	51	38	31
		144	122	103	90	72	75	59	52	45	38
Higgins	J675.8	120	107	88	74	63	68	60	48	36	29
		144	122	103	74	73	75	59	52	45	38
Coburn	J668.3	120	107	88	84	63	68	60	48	36	29
		144	122	103	84	73	75	59	52	35	38
Glazier	J661.3	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Clear Creek	J665.8	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Canadian	J650.3	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Isaacs	J646.9	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	35	30
Mendota	J640.0	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
Mexico Division—*Continued:*											
Lora	J635.1	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Miami	J678.5	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Codman	J621.8	122	108	89	85	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Hoover	J614.2	122	108	89	85	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Chaneas	J611.0	122	108	89	85	64	69	61	49	37	30
		134	119	98	86	68	72	70	49	42	35
Pampa	J606.4	122	108	89	85	64	69	61	49	37	30
		134	116	98	86	68	72	70	49	42	35
Kings Mill	J599.6	124	110	91	86	65	71	61	50	37	30
		133	115	97	85	68	71	56	49	42	35
White Deer	J592.6	124	110	91	86	65	71	61	50	37	30
		132	115	96	84	67	70	55	48	41	34
Cuyler	J586.5	124	110	91	86	65	71	61	50	37	30
		132	115	96	84	67	70	55	48	41	34

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Panhandle	J579.4	124	110	91	86	65	71	61	50	37	30
		131	113	95	83	67	70	55	48	41	34
Lee	J571.9	124	110	91	86	65	71	61	50	37	30
		130	112	94	82	66	69	54	47	40	33
St. Francis	J564.4	124	110	91	86	65	71	61	50	37	30
		130	112	94	82	66	69	54	47	40	33
662 Folson	J659.3	124	110	91	86	65	71	61	50	37	30
		129	111	93	81	66	69	54	47	40	33
Amarillo	J552.4	125	1[illegible]	92	87	66	72	62	51	38	31
		128	110	92	80	65	68	53	46	39	32
G. C. & S. F. Ry.:											
Pulliam	J463.8	115	101	82	78	60	65	56	45	32	25
		116	99	81	70	58	60	47	41	35	29
Turnerdale	J468.1	115	101	82	78	60	65	56	45	32	25
		116	99	81	70	58	60	47	41	35	29
Carlsbad	J473.9	115	101	82	78	60	65	55	45	32	25
		116	99	81	70	58	60	47	41	35	29
Water Valley	J480.5	115	101	82	78	60	65	56	45	32	25
		117	99	81	70	58	60	47	41	35	29
Broome	J489.0	115	101	82	78	60	65	56	45	32	25
		118	100	82	70	58	60	47	41	35	29

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
G. C. & S. F. Ry.—*Cont'd:*											
Sterling City	J500.7	115	101	82	78	60	65	56	45	32	25
		119	101	88	71	58	61	47	41	35	29
Artesian Belt R. R.:											
Kirk	J417.7	108	95	77	74	56	60	53	42	30	23
		114	97	80	69	57	59	46	40	34	28
Somerset	J422.3	108	95	77	74	56	60	53	42	30	23
		116	99	81	70	58	60	47	41	35	29
Tarbutton	J429.1	108	95	77	74	56	60	53	42	30	23
		116	99	81	70	58	60	47	41	35	29
Potect	J438.6	108	95	77	74	56	60	53	42	30	23
		116	99	81	70	58	60	47	41	35	29
Jourdanton	J446.7	112	99	81	78	57	62	54	43	31	24
		117	99	81	70	58	60	47	41	35	29
Imogene	J451.4	112	99	81	78	57	62	54	43	31	24
		118	100	82	70	58	60	47	41	35	29
Christine	J456.5	112	99	81	78	57	62	54	43	31	24
		118	100	82	70	58	60	47	41	35	29
Asherton & Gulf Ry.:											
Happle	J504.1	117	104	86	83	61	68	58	45	33	26
		121	106	85	78	60	63	48	43	35	30

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Farmington	J505.7	117	104	86	83	61	68	58	45	33	26
		122	104	86	73	60	63	48	42	36	30
Light	J551.5	117	104	86	83	61	68	58	45	33	26
		122	104	86	75	61	64	49	42	36	30
Lula	J516.1	117	104	88	86	62	68	59	45	33	26
		123	105	87	75	62	65	50	43	37	31
Catarina	J520.9	117	104	88	86	62	68	59	45	33	26
		123	105	87	75	62	65	50	43	37	31
Asherton	J531.8	117	104	88	86	62	68	59	45	33	26
		124	106	88	76	63	66	51	44	37	31
663 G. H. & S. A. Ry.:											
Alazan	S447.2	108	95	77	74	56	60	53	42	30	23
		108	92	75	65	54	56	43	38	33	27
Withers	S451.6	108	95	77	74	56	60	53	42	30	23
		108	95	75	65	54	56	43	38	33	27
Macdona	S459.7	108	95	77	74	56	60	53	42	30	23
		108	92	75	65	54	56	43	38	33	27
Lacoste	S467.2	108	95	77	74	56	60	53	42	30	23
		109	92	75	65	54	56	43	38	33	27
Pearson	S472.1	108	95	77	74	56	60	53	42	30	23
		109	92	75	65	54	56	43	38	33	27

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
G. H. & S. A. Ry.—*Cont'd:*											
Noonan	S478.9	108	95	77	74	56	60	53	42	30	23
		110	93	76	65	54	56	43	38	33	27
Dunlay	S481.8	108	95	77	74	56	60	53	42	30	23
		110	93	76	65	54	56	43	38	33	27
Quihi	S487.4	108	95	77	74	56	60	53	42	30	23
		111	94	77	66	54	57	43	38	33	27
Hondo	S491.6	108	95	77	74	56	60	53	42	30	23
		111	94	77	66	54	57	43	38	33	27
D'Harris	S500.1	108	95	77	74	56	60	53	42	30	23
		112	95	78	67	55	58	44	39	34	28
Seco	S505.0	110	97	79	76	56	61	53	42	30	23
		113	96	79	68	56	59	44	39	34	28
Sabinal	S512.6	112	99	81	78	57	62	54	43	31	24
		114	97	80	69	57	60	45	39	34	28
Yucca	S517.0	113	100	82	79	58	63	55	44	32	24
		114	97	80	69	57	60	45	39	34	28
Knippa	S523.5	113	100	82	79	58	63	55	44	32	25
		115	98	81	70	58	61	46	40	35	29

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Ange	S529.4	115	102	84	81	59	65	56	45	33	26
		115	98	81	70	58	61	46	40	35	29
Uvalde Jct.	S534.2	115	102	84	81	59	65	56	45	33	26
		116	99	82	71	59	62	47	41	35	29
Uvalde Jct.	S534.5	115	102	84	81	59	65	56	45	33	26
		116	99	82	71	59	62	47	41	35	29
Hacienda	S540.7	115	102	84	81	59	65	56	45	33	26
		116	99	82	71	59	62	47	41	35	29
Obi	S540.4	117	104	86	83	61	63	51	45	33	26
		117	100	82	72	60	63	48	42	36	29
Cline	S552.5	117	104	86	83	61	68	58	45	33	26
		118	101	84	73	60	63	48	42	36	29
664 G. H. & S. A. Ry.:											
Odlaw	S557.9	117	104	86	83	61	68	58	45	33	26
		118	101	84	73	60	63	48	42	36	29
Pave	S562.4	117	104	87	85	62	68	59	45	33	26
		118	101	84	73	60	63	48	42	36	29
Anacacho	S556.7	117	104	87	85	62	68	59	45	33	26
		119	102	85	74	61	64	49	43	37	30
Spafford	S574.8	117	104	88	86	63	68	60	45	33	26
		120	103	86	75	61	64	49	43	37	30

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
G. H. & S. A. Ry.—*Cont'd:*											
Nora	8579.9	117	105	90	87	64	68	61	45	33	26
		120	103	86	75	61	64	49	43	37	30
Darling	8585.7	117	105	90	87	64	68	61	45	33	26
		121	104	87	76	62	65	50	44	38	31
Paloma	8593.8	117	105	91	89	65	68	62	45	33	26
		122	105	88	77	62	65	50	44	38	31
Lamar	8599.9	117	105	92	91	65	68	62	45	33	26
		122	105	88	77	62	65	50	44	38	31
Olmos	8601.1	117	105	92	91	65	68	62	45	33	26
		122	105	88	77	62	65	50	44	38	31
Delchbury	8604.2	117	105	92	91	65	68	62	45	33	26
		123	106	89	78	63	66	51	45	29	32
Eagle Pass	8606.9	117	105	92	91	65	68	62	45	33	26
		123	106	89	78	63	66	51	45	39	32
Kinney	8581.9	117	104	88	86	63	68	60	45	33	26
		120	103	88	75	61	64	49	43	37	30
Pinto	8587.1	117	105	91	89	65	68	62	45	33	26
		121	104	87	76	62	65	50	44	38	31

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		121	104	87	78	62					
Standart	S592.7	117	105	91	89	66	68	62	45	33	26
		122	105	88	77	62	65	50	44	38	31
Amanda	S597.4	117	105	91	89	65	68	62	45	33	26
		122	105	88	77	62	65	50	44	38	31
Johnstone	S603.2	117	105	92	91	65	68	62	45	33	26
		123	106	89	78	69	66	51	45	39	32
Del Rio	S611.6	117	105	92	91	65	68	62	45	33	26
		123	106	89	78	63	66	51	45	39	32
McKee	S620.4	120	108	94	93	67	70	64	47	35	28
		124	107	90	79	63	66	51	45	39	32
Devils River	S626.4	123	110	96	95	69	92	65	49	37	30
		125	108	91	80	64	67	52	46	40	33
Comstock	S646.9	130	114	100	98	71	75	67	31	39	32
		131	113	96	84	67	70	55	49	43	36
665 El Paso	S836.6	117	105	92	91	65	68	62	45	33	26
		136	115	97	85	68	71	55	49	43	36
S. A. F. & N.:											
Nichols	J451.8	112	99	80	74	57	63	54	44	33	24
		119	101	83	71	58	61	47	41	35	29
Hillington	J457.5	112	99	80	74	57	63	54	44	33	24
		120	102	84	72	59	62	48	42	36	30

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
S. A. F. & N.—*Cont'd:*											
Mt. Alamo	J460.7	112	99	80	74	57	63	54	44	33	24
		120	102	84	72	59	62	48	42	36	30
Bankersmith	J462.3	112	99	80	74	57	63	54	44	33	24
		121	103	85	73	60	63	48	42	36	30
Cain City	J467.3	112	99	80	74	57	63	54	44	33	24
		121	103	85	73	60	63	48	42	36	30
Fredericksburg	J474	112	99	80	74	57	63	54	44	33	24
		122	104	86	74	61	64	49	42	36	30
I. & G. N.:											
Wipff	J438.2	108	95	77	74	56	60	53	42	30	23
		116	99	81	70	58	60	47	41	35	29
Moore	J443.4	108	95	77	74	56	60	53	41	29	22
		116	99	81	70	58	60	47	41	35	29
Jensen	J448.0	108	95	77	74	56	60	53	41	29	22
		116	99	81	70	58	60	47	41	35	29
Pearsall	J456.0	108	95	77	74	56	60	53	41	29	22
		117	99	81	70	58	60	47	41	35	29
Melon	J459.4	110	97	79	76	57	62	54	41	29	22
		117	99	81	70	58	60	47	41	35	29

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		117	99	81	70	58	60	47	41	35	29
Stedman	J461.3	110	97	79	76	57	62	54	41	29	22
		117	99	81	70	58	60	47	41	35	29
Derby	J464.9	110	97	79	76	57	62	54	41	29	22
		118	100	82	70	58	60	47	41	35	29
Dilby	J472.1	110	97	79	76	57	62	54	41	29	22
		118	100	82	70	58	60	47	41	35	29
Izzard	J476.1	112	99	81	78	58	64	55	42	30	23
		119	101	83	71	58	61	47	41	35	29
Millett	J478.5	112	99	81	78	58	64	45	42	30	23
		119	101	83	71	58	61	47	41	35	29
Gardendale	J482.7	115	102	84	81	59	65	56	42	30	23
		119	101	83	71	58	61	47	41	35	29
Catulla	J488.4	115	102	84	81	59	65	56	42	30	23
		120	102	84	72	59	62	48	42	36	30
Seefeld	J493.2	116	103	85	82	60	66	57	43	31	24
		120	102	84	72	59	62	48	42	36	30
666 Tunna	J497.0	116	103	85	82	60	56	57	43	31	24
		121	103	85	73	60	63	48	42	36	30
Artesia Wells	J499.7	116	103	85	82	60	66	57	43	31	24
		121	103	85	73	60	63	48	42	36	30

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
I. & G. N.—*Continued:*											
Artesia	J501.5	116	103	85	82	60	66	57	43	31	24
		121	103	85	73	60	63	48	42	36	30
McWhorter	J502.1	116	103	85	82	60	67	57	44	32	25
		121	103	85	73	60	63	48	42	36	30
Atlee	J510.6	116	103	85	82	60	67	57	44	32	25
		122	104	86	74	61	64	49	42	36	30
Encinal	J517.1	117	104	86	83	61	68	58	45	33	26
		123	105	87	75	62	65	50	43	37	31
Rodriguez	J521.3	117	104	88	86	62	28	59	45	33	26
		123	105	87	75	62	65	50	43	37	31
Urbahn	J528.6	117	104	88	86	62	68	59	45	33	26
		124	106	87	76	63	66	51	44	37	31
Webb	J534.8	117	104	88	86	62	68	59	45	33	26
		125	107	89	77	64	67	52	46	38	31
Orvil	J545.8	117	105	92	92	65	68	62	45	33	26
		126	108	90	78	64	67	52	46	38	31
Laredo	J555.2	117	105	92	91	65	68	62	45	33	26
		127	109	91	79	65	68	53	46	39	32

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S. A. U. & G.:											
San Jose	J408.6	112	99	81	78	57	62	54	43	31	24
		116	99	81	70	58	60	47	41	35	29
Cassin	J414.5	112	99	81	78	57	62	54	43	31	24
		116	99	88	70	58	60	47	41	35	29
Coreleta	J415.3	112	99	81	78	57	62	54	43	31	24
		116	99	81	70	58	60	47	41	35	29
Haiduk	J424.5	112	99	81	78	57	62	54	43	31	24
		117	99	81	70	58	60	47	41	35	29
Leming	J428.5	112	99	81	78	57	62	54	43	31	24
		117	99	81	70	58	60	47	41	35	29
Pleasanton	J433.9	112	99	81	78	57	62	54	43	31	24
		118	100	82	70	58	60	47	41	35	29
Brickton	J439.9	112	99	81	78	57	62	54	43	31	24
		118	100	82	70	58	60	47	41	35	29
N. Pleasanton	J435.6	112	99	81	78	57	62	54	43	31	24
		118	100	82	70	58	60	47	41	35	29
Pleasanton	J436.2	112	99	81	78	57	62	54	43	31	24
		118	100	82	70	58	60	47	41	35	29
Coughran	J440.7	115	102	84	81	58	63	55	44	32	25
		118	100	82	70	58	60	47	41	35	29

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
S. A. U. & G.—*Cont'd:*											
McCoy	J447.4	117	104	88	86	63	68	60	45	33	26
		119	101	83	71	58	61	47	41	35	29
667 Campbelton	J457.1	117	104	88	86	63	68	60	45	33	26
		120	102	84	72	59	62	48	42	36	30
Whitsett	J465.2	117	104	88	86	63	68	60	45	33	26
		121	103	85	73	60	63	48	42	36	30
Fant City	J469.9	117	104	88	86	63	68	60	43	33	29
		120	102	84	72	59	62	48	42	36	30
Three Rivers	J476.6	117	104	88	86	63	68	60	45	33	29
		119	101	83	71	58	61	47	41	35	29
Kittie	J473.8	117	104	88	86	63	68	60	45	33	29
		119	101	83	71	58	61	47	41	35	29
George West	J465.9	117	154	83	68	63	68	60	45	33	26
		118	100	82	70	58	60	47	41	35	29
Mikesha	J460.5	117	104	88	86	63	68	60	45	33	26
		118	100	82	70	58	60	47	41	35	29
Dinera	J453.4	117	104	88	86	63	68	60	45	33	26
		117	99	81	70	58	60	47	41	35	29

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Lucas	J450.2	117	104	88	86	63	68	60	45	33	26
		117	99	81	70	58	60	47	41	35	29
Mathis	J441.0	112	100	83	80	60	64	57	43	31	24
		116	99	81	70	58	60	47	41	35	29
Edroy	J445.1	112	100	83	80	60	64	57	43	31	24
		116	99	81	70	58	60	47	41	35	29
Odom	J448.0	112	100	83	80	60	64	57	43	31	24
		116	99	81	70	58	60	47	41	35	29
Viola	J448.0	112	100	83	80	60	64	57	43	31	24
		116	99	81	70	58	60	47	41	35	29
Nueces	J452.4	112	100	83	80	60	64	57	43	31	24
		116	99	81	70	58	60	47	41	35	29
Jourdanton	J441.3	112	99	81	78	57	62	54	43	31	24
		117	99	81	70	58	60	47	41	35	29
Charlotte	J452.6	117	104	88	86	63	68	60	45	33	26
		118	100	82	70	58	60	47	41	35	29
Hindes	J464.4	117	104	88	86	63	68	60	45	33	26
		120	102	84	72	59	62	48	42	36	30
Zella	J475.3	117	104	88	86	63	68	60	45	33	26
		121	103	85	73	60	63	48	42	36	30

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
S. A. U. & G.—*Cont'd:*											
Fowlerton	J432.1	117	104	88	86	63	68	60	45	33	26
		121	103	85	73	60	63	48	42	36	30
Dulls	J490.2	117	104	88	86	63	68	60	45	33	26
		121	103	85	73	60	63	48	42	36	30
Belton	J494.9	117	104	88	86	63	68	30	45	33	26
		121	103	85	73	60	63	48	42	36	30
Dobson	J489.9	117	104	88	86	63	68	60	45	36	26
		120	102	84	72	59	62	48	42	36	30
668 Gardendale	J482.7	115	104	84	81	59	65	56	42	30	23
		119	101	83	71	58	61	47	41	35	29
Woodward	J489.3	117	104	88	86	63	68	60	45	33	26
		120	102	84	72	59	62	48	42	36	30
Las Vegas	J499.0	117	104	88	86	63	68	60	45	33	26
		121	103	85	73	60	63	48	42	36	30
Big Wells	J504.8	117	104	88	86	63	68	60	45	33	26
		121	104	86	74	61	64	49	42	36	30
Brundage	J511.4	117	104	88	86	63	68	50	45	33	26
		121	104	86	74	61	64	49	42	36	30

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Palm	J517.6	117	104	88	86	63	68	60	45	33	26
		123	105	87	75	62	65	50	43	37	31
Crystal City	J523.7	117	104	88	86	63	68	60	45	33	26
		123	105	87	75	62	65	50	43	37	31
Byrd	J528.9	117	104	88	86	63	68	60	45	33	26
		124	106	88	76	63	66	51	44	37	31
Carrizo Spgs.	J536.0	117	104	88	86	63	68	60	45	33	26
		125	107	89	77	64	67	52	45	38	31
New California	J528.2	117	104	88	86	63	68	60	45	33	26
		124	106	88	76	63	66	51	44	37	31
Zacate	J523.1	117	104	88	86	63	68	60	45	33	26
		125	107	89	77	64	67	52	45	38	31
La Pryor	J516.5	117	104	86	83	61	68	58	45	33	26
		125	107	89	77	64	67	52	45	38	31
											Was
Washers	J508.8	117	104	86	83	61	68	58	45	33	26
		125	107	89	77	64	67	52	45	38	31
Pulliam	J506.4	117	104	86	83	61	68	58	45	33	26
		125	107	89	77	64	67	52	45	38	31
Uvalde	J496.1	115	102	84	81	59	65	56	45	33	26
		124	106	88	76	63	66	51	44	37	31

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
S. A. U. & G.—*Cont'd:*											
Uvalde Jct.	J494.0	..115	102	84	81	59	65	56	45	33	26
		116	99	82	71	59	62	47	41	35	29
R. G. & E. P. Ry.:											
McKendrick Spr.	J554.1	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
Toga Spur	J553.5	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
W. Crook Spur	J553.4	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
Christen Spur	J553.1	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
Dodd Spur	J552.6	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
669 Cone Spur	J552.1	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
Nye Spur	J551.6	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
Davis Spur	J551.1	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31

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Pace Spur	J552.0	117	105	92	91	65	68	62	45	33	26
		126	108	90	78	64	67	52	45	38	31
Gomkin Spur	J551.5	117	105	92	91	65	68	62	45	36	25
		126	108	90	78	64	67	52	45	38	31
Sanchez Hill	J554.8	117	105	92	91	65	68	62	45	33	26
		127	109	91	79	65	68	53	46	39	32
Benevides Hill	J559.2	117	105	92	91	65	68	62	45	33	26
		127	109	91	79	65	68	53	46	39	32
San Sabinal	J552.5	117	105	92	91	65	68	62	45	33	26
		127	109	91	79	65	68	53	46	39	32
Legendecker	J553.3	117	105	92	91	65	68	62	45	33	29
		127	109	91	79	65	68	53	46	39	32
Morrow Spur	J563.8	117	105	92	91	65	68	62	45	33	26
		127	109	91	79	65	68	53	46	39	32
Islitas	J564.6	117	105	92	91	65	68	62	45	33	26
		127	109	91	79	65	68	53	46	39	32
Lithgow	J566.0	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	45	39	32
Simon	J567.1	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	46	39	32

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
R. G. & E. P. Ry.—*Cont'd:*											
Wright	J568.5	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	46	39	32
Gardner	J569.0	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	46	39	32
Dolores	J569.2	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	46	39	32
Gravel Pit	J569.5	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	46	39	32
Darwin	J571.1	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	46	39	32
Minera	J572.3	117	105	92	91	65	68	62	45	33	26
		128	110	92	80	65	68	53	46	39	32
Tex. Mex. Ry.:											
Pescadito	J570.8	117	105	92	91	65	68	62	45	33	26
137.8		128	110	92	80	65	68	53	46	39	32
Villegas	J563.0	117	105	92	91	65	68	62	45	33	26
135		128	110	92	80	65	68	53	46	39	32
Reisar	J561.3	117	105	92	91	65	68	62	45	33	26
133.3		128	110	92	80	65	68	53	46	39	32

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Aguilares	J558.3	117	105	92	91	65	68	62	45	33	26
130.3		128	110	92	80	65	68	53	46	39	32
670 Ochse	J553.3	117	105	92	91	65	68	62	45	33	26
125.3		127	109	91	79	65	68	53	46	39	32
Torrecillas	J549.7	117	105	92	91	65	68	62	45	33	26
121.7		127	109	91	79	65	68	53	46	39	32
Laurel	J547.7	117	105	92	91	65	68	62	45	38	26
119.7		126	108	90	78	64	67	52	45	38	31
Bruin	J540.7	117	105	92	91	65	68	62	45	33	26
112.7		126	108	90	78	64	67	52	45	38	31
Saeng	J536.1	117	105	92	91	65	68	62	45	33	26
103.1		125	97	89	77	64	67	52	45	38	31
Hebbronville	J527.1	117	105	92	91	65	58	62	45	33	26
99		124	106	88	76	63	56	51	44	37	31
Crestain	J519.8	117	105	92	91	65	68	62	45	33	26
91.8		124	106	88	76	63	66	51	44	37	31
Dubose	J516.9	117	105	92	91	65	68	62	45	33	26
889		123	105	87	75	62	65	50	43	37	31
Realitos	J512.5	117	105	92	91	65	68	62	45	33	26
84.5	J	123	105	87	75	62	65	50	43	37	31

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
Tex. Mex. Ry.—*Cont'd:*											
Norway	J503.5	117	105	92	91	65	58	62	45	33	26
75.5		122	104	86	74	61	64	49	42	36	30
Sweden	J502.5	117	105	92	91	65	68	62	45	33	26
44.5		122	104	86	74	61	64	49	42	36	30
Benavides	J498.0	117	105	92	91	65	68	52	45	33	26
70		121	103	85	73	60	63	48	42	36	30
Noleda	J494.9	117	105	92	91	65	68	52	45	33	26
66.9		121	103	85	73	60	53	48	42	36	30
Gravis	J489.6	117	105	92	91	65	68	62	45	33	26
61.6		121	103	85	73	60	63	48	42	36	30
San Diego	J480.0	117	105	92	91	65	68	62	45	33	26
52		120	102	84	72	69	62	48	42	36	30
Springfield	J477.2	117	105	92	91	65	68	62	45	33	26
49.2		119	101	83	71	58	61	47	41	35	29
Alice	J470.0	117	105	92	91	65	68	62	45	33	26
42		119	101	83	71	58	61	47	41	35	29
Bentonville	J470.8	117	105	92	91	65	68	62	45	33	26
34.6		118	100	82	71	58	60	47	41	35	29

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Agua Dulce	J467.7	117	105	92	91	65	68	62	45	33	26
31.5		118	100	82	71	58	60	47	41	35	29
Banquette	J460.6	117	105	92	91	65	68	62	45	33	26
24.4		117	99	81	70	58	60	47	41	35	29
Rabb	J457.5	117	105	92	91	65	68	62	45	33	26
21.3		117	99	81	70	58	60	47	41	35	29
St. L. B. M. Ry.:											
Odom	J439.0	112	100	83	80	60	64	57	43	31	24
7.6		116	99	81	70	58	60	47	41	35	29
Angeleta	J441.9	112	100	83	80	60	64	57	43	31	24
10.5		116	99	81	70	58	60	47	41	35	29
671 Cal Allen	J445.4	112	100	83	80	60	64	57	43	31	24
14		116	99	81	70	58	60	47	41	35	29
Panhandle & Santa Fe Ry. Co.:											
Higgins	J675.8	120	107	88	84	63	68	60	48	36	29
		144	122	103	84	73	75	59	52	45	38
Coburn	J668.3	120	107	88	84	63	68	60	48	36	29
		144	122	103	84	73	75	59	52	45	38
Glazier	J661.3	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38

Stations.	Miles.	1	2	3	4	5	A	B	C	D	E
Panhandle & Santa Fe Ry. Co.—*Cont'd:*											
Clear Creek	J665.8	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Canadian	J650.3	120	107	88	84	63	68	60	48	36	29
		139	120	101	89	71	74	59	52	45	38
Isaacs	J646.9	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Mendota	J640.0	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Lora	J678.5	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Miami	J678.5	121	107	88	84	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Codman	J621.8	122	108	89	85	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Hoover	J614.2	122	108	89	85	64	69	61	49	37	30
		139	120	101	89	71	74	59	52	45	38
Chanesa	J611.0	122	108	89	85	64	69	61	49	37	30
		134	116	98	86	68	72	58	49	42	35

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Pampa	J606.4	122	108	89	85	64	69	61	49	37	30
		134	116	98	86	68	72	56	49	42	35
Kings Mill	J599.6	124	110	91	86	65	71	61	50	37	30
		133	115	97	85	68	71	56	49	42	35
White Deer	J592.6	124	110	91	86	65	71	61	50	37	30
		132	115	96	84	67	70	55	48	41	34
Cuyler	J586.5	124	110	91	86	65	71	61	50	37	30
		132	115	96	84	67	70	55	48	41	34
Panhandle	J579.4	124	110	91	86	65	71	61	50	37	30
		131	113	95	83	67	70	55	48	41	34
Lee	J571.9	124	110	91	86	65	71	61	50	37	30
		130	112	94	82	66	69	54	47	40	33
St. Francis	J564.4	124	110	91	86	65	71	61	50	37	30
		130	112	94	82	66	69	54	47	40	33
Falsom	J559.3	124	110	91	86	65	71	61	50	37	30
		129	111	93	81	66	69	54	47	40	33
Amarillo	J552.4	125	111	92	87	66	72	62	51	38	31
		128	110	92	80	65	68	53	46	39	32

672 *"Special Appearance of the United States and Motion."*

Defendants introduced and read in evidence the "Special Appearance of the United States, and Motion," filed in Equity 295 April 4th, 1917, by the United States, through the Attorney General of the United States, which reads as follows:

United States of America, by its counsel, appearing specially for the purpose, and for no other purpose, now comes, within the thirty (30) days allowed by section 209 of the Judicial Code (the defendants having undertaken to invoke the jurisdiction of the court under section 208 of the Judicial Code), and not admitting, but denying, that it has been or can be made a party to said cause in manner and form as undertaken, represents, in order to avoid any question of default, that the court may not proceed against it and is without jurisdiction to do so, because:

(1) No order has been made by this court making it a party to or requiring it to appear and make answer in said cause, and it can not be made a party or required to appear without such order.

(2) It is not a party in said cause, and can not be brought in as a new party by cross petition or answer in the nature of a cross petition.

(3) It may not be sued in the Western District of Texas, because that is not the judicial district wherein is the residence of the party or any of the parties upon whose petition the order of the Interstate Commerce Commission was made, the proper venue, if any, being the judicial district for the Eastern District of Louisiana.

(4) It has not consented to be sued in the manner and form in which attempt has been made to sue in this cause.

Wherefore, the United States offers this representation as a suggestion to the court that no appearance or defense may be required of it without an order of court making it a party and why such order should not be made.

673 In the event the court holds that no such order is necessary, it further submits, still relying on its special appearance, the foregoing as a motion to strike from the answer of defendants all of the allegations included in paragraphs 17, 18, 23, 24, 25, 26, and 28 thereof and to dismiss said cross petition against the United States for want of jurisdiction over it and over the subject matter embraced therein, upon the grounds above set out.

E. MARVIN UNDERWOOD,
Assistant Attorney General.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

November, 1916.

It was agreed that copies of Defendants' "Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint,"—copied above,—were, by mail, sent by defendants to the Attorney General of the United States and to the Interstate Commerce Commission on

September —, 1917, except that the copies so sent to those parties did not contain the following language to be found in the concluding sentence of said "Reply and Answer," towit:—"and that said order be set aside,"—which language was omitted from such copies by mistake.

Defendants read in evidence the following letters transmitting the aforesaid copies of Defendants' said "Reply and Answer," towit:—

September Sixth, Nineteen Seventeen.

The Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: I am enclosing herewith a copy of the answer filed by B. F. Looney, Attorney General, and myself, as Assistant Attorney General, in reply to the plaintiffs' second supplemental bill of complaint filed in the District Court of the United States for the Western District of Texas, Austin Division, In Equity, No. 295. Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al.

674 You will note that in this answer an alternative attack is made on the order of the Interstate Commerce Commission, entered in I. C. C. docket No. 8418, on July 7th, 1916.

I am also enclosing herewith a copy of the order of Circuit Judge R. L. Batts, acting as District Judge, setting the matters involved in plaintiffs' said second supplemental bill of complaint and the answer thereto for hearing for the 20th day of September, 1917, at 10 o'clock a. m. at Austin, Texas. Please acknowledge receipt, and oblige,

Yours truly,

(Signed) LUTHER NICKELS,
Assistant Attorney General.

L. N. M. W. M.

Encs. 2.

September Sixth, Nineteen Seventeen.

Honorable T. W. Gregory, Attorney General of United States, Washington, D. C.

DEAR SIR: I am enclosing herewith a copy of the answer filed by B. F. Looney, Attorney General, and myself, as Assistant Attorney General, in reply to the plaintiffs' second supplemental bill of complaint filed in the District Court of the United States for the Western District of Texas, Austin Division, In Equity, No. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al.

You will note that in this answer an alternative attack is made on the order of the Interstate Commerce Commission entered in I. C. C. docket No. 8418, on July 7th, 1916.

I am also enclosing herewith a copy of the order of Circuit Judge R. L. Batts, acting as District Judge, setting the matters involved in plaintiffs' said second supplemental bill of complaint and the answer

thereto for hearing for the 20th day of September, 1917, at 10 o'clock a. m. at Austin, Texas. Please acknowledge receipt, and oblige,

Yours truly,

(Signed) LUTHER NICKELS,
Assistant Attorney General.

L. N. M. W. M.
Encs. 2.

675 Said copies were received by the Interstate Commerce Commission more than five days prior to September 20th, 1917. In response to said letters and copies an Attorney representing the Interstate Commerce Commission was present in Court during the hearing and disposition of the matters involved in Plaintiffs' Second Supplemental Bill and Defendants' Reply and Answer thereto.

Mileage Table No. 6.

Defendants introduced in evidence Mileage Table No. 6, issued by the Railroad Commission of Texas, which shows the distances by railway between all railway stations in Texas, and it was agreed that any party might make reference to any of the contents thereof in their briefs and argument before the Supreme Court without the necessity of setting forth herein said table in full. It was further agreed that said Table shows the stations named below, all being on the direct line of the Texas & Pacific Railway Company between El Paso, Texas, and Shreveport, La., and being named in order as located Eastward from El Paso, Texas, the distance in miles from El Paso, Texas, being shown by the figure following each station as named, towit:—

Alfalfa, 7; Ysleta, 13; Belen, 17; Clint, 22; Fabens, 30; Tornillo, 35; Polvo, 40; Iser, 46; Fort Hancock, 53; Nulo, 58; Madden 63; Tinaja, 67; Darden, 71; Small, 76; Torcer, 80; Lasca, 84; Ebtolea, 88; Sierra Blanca, 92; Ariape, 97; Eagle Flat, 106; Allamore, 115; Vanhorn, 126; Wild Horse, 134; Plateau, 142; Boracho, 152; Kent, 162; Levison, 160; San Martine, 174; Gozar, 184; Toyah, 195; Hermosa, 205; Pecos, 214; Barstow, 220; Quito, 226; Pyote, 236; Arova, 246; Monahans, 251; Sand Hills, 256; Meta, 267; 676 Judkins, 269; Ducro, 276; Odessa, 287; Warfield, 297; Midland, 307; Germania, 316; Stanton, 326; Morita, 336; Big Springs, 346; (Differential Line); Coahoma, 357; Iatan, 365; Westbrook, 375; Colorado, 384; Loraine, 393; Roscoe, 404; Sweet Water 412; Eakota, 422; Trent, 430; Merkel, 437; Tye, 445; Abilene, 453; Clyde, 467; Baird, 474; Chautauqua, 479; Putnam, 486; Dothan, 491; Cisco, 499; Eastland, 509; Ranger, 518; Tiffin, 521; Wiles, 526; Strawn, 533; Mingus, 538; Gordon, 541; Judd, 546; Santo, 552; Brazos, 558; Bennetts, 565; Millsap, 569; Lambert, 576; Weatherford 583; Earle, 586; Aledo, 595; Benbrook, 605; Tremble, 611; Ft. Worth, 614; Handley, 620; Arlington, 627; Grand Prairie, 633; Eagle Ford, 640; Dallas, 645; Orphans Home, 653; Mesquite, 658;

Forney, 666; Lawrence, 673; Terrell, 677; Elmo, 682; Wills Point, 692; Edgewood, 700; Grand Saline 710; Mineola, 724; Crow, 734; Bryans, 737; Hawkins, 741; Big Sandy, 747; Wilkins, 753; Gladewater, 757; Camps, 763; Longview, 769; Lansing, 776; Hallsville, 779; Deckert, 781; Abneys, 788; Marshall, 793; Waskom, 813; Shreveport, 836.

677 It is agreed that the foregoing 610 pages is a full, true and correct statement of all the facts proved, and evidence introduced, upon the hearing and trial of Plaintiffs' Second Supplemental Bill Of Complaint, and the prayers thereof, and the Reply And Answer To Plaintiffs' Second Supplemental Bill Of Complaint and amendment thereto, and the prayers thereof, before the Court as composed of Hon. R. L. Batts, Circuit Judge, Hon. Gordon Russell, District Judge, Eastern District of Texas, and Hon. W. R. Smith, District Judge, Western District of Texas, at Austin, Texas, on the twentieth, twenty-first and twenty-second days of September, 1917, in cause (Equity) No. 295, styled:—Eastern Texas Railroad Company, et als., Plaintiffs, versus Railroad Commission of Texas, et als., Defendants,—

(Signed) H. M. GARWOOD,
J. W. TERRY,
HIRAM GLASS,
V. L. BROOKS,
Solicitors for Plaintiffs and Appellees.
B. F. LOONEY,
Defendant, Pro Se.
LUTHER NICKELS,
Defendant, Pro Se.

Endorsed: Equity 295. In the District Court of the United States for the Western District of Texas Austin Division. Eastern Texas Railroad Company et als., Plaintiffs vs. Railroad Commission of Texas et als., Defendants. Statement of Evidence on Appeal. Filed October 5, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

678 *Order Approving Statement of Evidence.*

Filed September 28, 1917.

On this the 28th day of September, A. D. 1917, the foregoing Statement of Evidence on Appeal having been presented to me, the same is in all things approved and allowed, and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal, as provided in the Equity Rules.

(Signed) R. L. BATTS,
United States District Judge,
Western District of Texas.

Petition for Appeal and Allowance Thereof.

Filed September 22, 1917.

In the District Court of the United States for the Western District of Texas, Austin, Texas.

Equity, 295.

EASTERN TEXAS RAILROAD COMPANY et als., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et als., Defendants.

Petition for Appeal and Allowance Thereof.

Whereas,—On the hearing of the prayers for interlocutory injunction, and for other relief, contained in the Second Supplemental Bill of Complaint filed in the above styled and numbered cause by the Eastern Texas Railroad Company, and others, as Plaintiffs, against B. F. Looney, Attorney General of Texas, and Luther Nickels, Assistant Attorney General of Texas, as Defendants, and contained in said Defendants' "Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint," aforesaid, the Court, sitting and composed of Hon. R. L. Batts, Circuit Judge, and Hon. W. R. Smith and Hon. Gordon Russell, District Judges, on the 22 day of September, 1917, entered a decree, order and judgment in said cause:

Come now said B. F. Looney said Luther Nickels, Defendants, as aforesaid, and, conceiving themselves aggrieved by the said de-
679 cree, order and judgment entered in the above styled and numbered cause on the 22 day of September, A. D. 1917, hereby appeal from said decree, order and judgment to the Supreme Court of the United States, and they pray that their appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree, order and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

And now, at the time of the filing of this petition for appeal, said B. F. Looney and said Luther Nickels, appellants, file an assignment of errors, setting up separately and particularly each error asserted and intended to be urged in the Supreme Court of the United States.

Wherefore, the said B. F. Looney and Luther Nickels, Defendants, as aforesaid, and Appellants, pray that their appeal be allowed.

(Signed) B. F. LOONEY,
LUTHER NICKELS,
Defendants and Appellants, Pro Se.

And now, to-wit, on this the — day of September, A. D. 1917, at Austin, Texas, it is ordered that the appeal prayed for in the fore-

going petition be, and the same is hereby, allowed as therein prayed for.

(Signed) R. L. BATTS,
W. R. SMITH,
GORDON RUSSELL.

Endorsed: Equity No. 295. Eastern Texas R. R. Co. et al., Plaintiffs, vs. Railroad Commission of Texas, et al., Defendants. In the District Court of the United States for the Western District of Texas, Austin, Texas. Petition for appeal and allowance thereof. Filed Sept. 22, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

680 *Assignments of Error.*

Filed Sept. 22, 1917.

In the District Court of the United States for the Western District of Texas, Austin, Texas.

Equity, 205.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Assignments of Error.

And now at the time of filing their petition for appeal and the allowance thereof, come B. F. Looney and Luther Nickels, defendants and appellants, and make and file their assignments of error as follows:

I.

The court and judges thereof erred in granting the plaintiffs the interlocutory injunction as prayed for by them, and as granted by order of September 22, 1917, because Section 265 of the Judicial Code (36 Stat. 1, 1162) prohibits such action and such injunction.

II.

The court and judges thereof erred in granting the interlocutory injunction as prayed for by plaintiffs, and as granted, because the order of the Interstate Commerce Commission, of date July 7, 1916, as construed by the court and the judges thereof, and as enforced by said order, and otherwise, was and is void, because the same contravenes that portion of Section 1 of the Act to Regulate Commerce wherein it is provided: "That the provisions of this Act shall not apply to the transportation of * * * property, or to the receiving, delivering, storage, or handling of property, wholly within one State or Territory, as aforesaid."

681 III.

The court and the judges thereof erred in granting plaintiffs the interlocutary injunction as prayed for by them and as granted, because the order of the Interstate Commerce Commission, of date July 7, 1916, upon which plaintiffs' prayer was based, is void and unenforcible because the same is too indefinite as to the points or territory to which it might lawfully apply, and because the same does not in any way, directly or by reference, define the territory in Texas commercially tributary to Shreveport, Louisiana, or the points or territory within Texas in or with respect to which there is competition beween the shippers of Shreveport, Louisiana, and the shippers at any Texas points, or in or with respect to which there was, is, or can be, any undue discrimination against Shreveport, Louisiana, or the shippers thereof, by reason of the relation of State and Inter-State rates.

IV.

The court and the judges thereof erred in granting the interlocutory injunction as prayed by plaintiffs, and as granted, because the order of the Interstate Commerce Commission, of date July 7, 1916, upon which plaintiffs' claim for relief is based, was and is void because, as affirmatively appears from the record accompanying said order on pages 120 and 121 thereof, the Interstate Commerce Commission undertook to make said order applicable to territory in Texas west of "East Texas" (as defined in 34 I. C. C. 472),—in an effort to prevent supposed discrimination as between localities and cities within Texas with respect to movements in intra-state commerce, and did not make the order so apply to prevent undue discrimination against inter-state commerce and because of the premises the Interstate Commerce Commission committed an error of law and exceeded its power to such an extent as to render said order and paragraphs 9 and 10 thereof void and unenforcible.

V.

The court and the judges thereof erred in granting the interlocutary injunction as prayed by plaintiffs, and as granted, be-
682 cause the order of the Interstate Commerce Commission, of date July 7, 1916, upon which plaintiffs' claim for relief was based, was, and is void in whole or part because, as affirmatively appears on pages 91 to 95, and pages 100 to 107 and appendix C, and other portions of the report accompanying said order, the Interstate Commerce Commission in undertaking to prescribe and authorize,—if it did so by said order,—rates and regulations as applicable to intra-state shipments in excess of those therefor prescribed by the Railroad Commission of Texas and especially the differential rates involved, was seeking to increase the revenues of the carriers, to condemn such inter-state rates as being inadequate, and to sub-

stitute for such State rates, rates which it thought to be adequate,—and thereby said Commission committed an error of law and exceeded its lawful authority to such an extent as to render said order void and unenforcible. In this connection appellants say that the Interstate Commerce Commission had no lawful authority to inquire into or pass upon the question of the unreasonableness of such State rates, but that its lawful jurisdiction was limited to the existence and removal of actual and undue discrimination against inter-state commerce.

VI.

The court and the judges thereof erred in granting unto the Fort Worth & Denver City Railway Company, one of the plaintiffs, an interlocutory injunction as prayed for by said company, and as granted to it, for the reason that the report of the Interstate Commerce Commission, of date July 7, 1916, and especially pages 173 and 174 thereof, affirmatively show and find that rates prescribed by the Railroad Commission of Texas applicable to intra-shipments on the line of said company, and especially the differential rates therefor prescribed are adequate and reasonable and are such as to bring the said company a reasonable return upon its investments, and by reason of this fact and finding the Interstate Commerce Commission
683 had no lawful authority to authorize, and therefore did not authorize, said company to set aside such State rates and to substitute therefor the high rates which it has done, and will do, and thereby impose upon the shippers unreasonable rates.

VII.

The court and judges erred in granting the interlocutory injunction as prayed for by plaintiff, and as granted, because said order of the Interstate Commerce Commission, dated July 7, 1916, as construed by plaintiffs and by the court, undertakes to prescribe interstate rates applicable between Shreveport, Louisiana, and points in Texas for all distances from one (1) mile to twenty (20) miles, and to make the same the measure of what plaintiffs call the "standard rates" between points within the State of Texas for such distances, although the shortest distance between Shreveport, Louisiana, and any Texas point, by the line of any railway, is more than twenty (20) miles, and although the distance between Shreveport, Louisiana, to the nearest point on the Texas-Louisiana State Line, by the line of any railway, is twenty (20) miles or more, and although there can not possibly be an inter-state shipment between Shreveport, Louisiana, and any Texas point which does not, necessarily, move more than twenty (20) miles; said portions of the order cannot therefore, be properly construed as applicable to shipments moving between points in Texas for distances of twenty (20) miles or less, and if so construed, or applicable, the same is void in whole, or, at least, to such extent; and the court erred in granting an interlocutory injunction with respect to intra-state movements for distances of twenty (20) miles or less.

VIII.

The court and the judges erred in granting the interlocutory injunction as prayed for by plaintiffs, and as granted, because the plaintiffs and the court misconstrued the order of the Inter-
684 state Commerce Commission, of date July 7, 1916, with respect to differential rates applicable to intra-state shipments moving for distances of three hundred fifty-one (351) miles or less because, as is apparent from the report of the Interstate Commerce Commission and the record in this case, there can not be a shipment between Shreveport, Louisiana, and any point in differential territory in Texas which does not move for a distance of more than 351 miles and, because paragraphs 9 and 10 of said order only prohibit plaintiffs from charging rates on shipments between Shreveport, Louisiana, and points in differential territory in Texas in excess of rates contemporaneously applied by them "for the transportation of like property for like distances between points in Texas," and because paragraphs 9 and 10 of said order would be complied with literally and in substance by the carriers by the application to shipments moving between points in Texas for distances of 351 miles and less of rates no lower than those contemporaneously applied to shipments moving between Shreveport, Louisiana, and points in Texas distant 351 miles or less; whereas, under the construction given said order by the plaintiffs and the court, the plaintiffs have charged, and will charge, rates on shipments moving for distances of 351 miles or less between points in Texas, which are materially higher (when such shipments are within differential territory in whole or part) than rates contemporaneously charged on shipments moving for distances of 351 miles or less between Shreveport, Louisiana, and points in Texas.

IX.

The court and the judges thereof erred in granting the interlocutory injunction as prayed for by plaintiffs, and as granted, because if the order of the Interstate Commerce Commission, of date July 7, 1917, undertakes to authorize the Plaintiffs to charge differential rates on shipments moving for distances of 351 miles or less between points within Texas, the order is void in whole or in this respect because, in such event, the same undertakes to,
685 and does, create unjust and unreasonable discrimination against intrastate commerce and each and all of the various towns, cities, localities and shippers located within differential territory in Texas and by reason thereof, in such event, the Interstate Commerce Commission grossly abused such powers as it had and exceeded its lawful authority; and, as illustrative thereof, it affirmatively appears from said order and report and the record in this case, that under such construction of the order a merchant located at El Paso, Texas, would be compelled to pay $1.36 per one hundred pounds on merchandise classed as first class, moving to Sweetwater, Texas, 412

miles east of El Paso; while a Shreveport, Louisiana, merchant would only be compelled to pay $1.06 per one hundred pounds for the transportation of like property from Shreveport, Louisiana, to Sweetwater, Texas, a distance of 423 miles, Sweetwater, Texas, being on a direct line between Shreveport, Louisiana, and El Paso, Texas, and a like discrimination, under such construction of said order, exists against all localities and shippers within differential territory in Texas.

X.

The Court and the Judges thereof erred in refusing to grant unto these Defendants an interlocutory injunction, as prayed for by them in Paragraph XIV of the amendment to their Answer and Reply to Plaintiff-' Second Supplemental Bill of Compiaint, restraining the Plaintiffs, and each of them, from further applying or charging the Differential Rates now charged by them, or any Differential Rates in excess of those prescribed therefor by the Railroad Commission of Texas and under the conditions so prescribed, on shipments moving wholly in intra-state commerce for distances of 351 miles or less, because the order of the Interstate Commerce Commission of date July 7, 1916, does not authorize or purport to authorize the Plaintiffs to charge, for such shipments, Differential Rates in excess of those prescribed therefor, and under the
686 conditions therefor prescribed, by the Railroad Commission of Texas, and because if said order did undertake to authorize the Plaintiffs to charge for such shipments Differential Rates other than those prescribed therefor by the Railroad Commission of Texas the same was and is void and unenforcible.

XI.

The Court and the Judges thereof erred in failing and refusing to grant to these Defendants an interlocutory injunction, as prayed for by them, restraining the Plaintiffs, and each of them, from charging the Differential Rates now charged by them, or any Differential Rates in excess of those prescribed therefor by the Railroad Commission of Texas, under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of twenty miles or less, because the order of the Interstate Commerce Commission does not authorize, cannot lawfully authorize, and does not purport to authorize the Plaintiffs to charge for such shipments Differential Rates in excess of those prescribed therefor by the Railroad Commission of Texas, and because said order, if it does undertake to authorize Plaintiffs to charge Differential Rates on such shipments in excess of those prescribed therefor by the Railroad Commission of Texas, is void and unenforcible.

XII.

The Court and the Judges thereof erred in failing and refusing to enter an order suspending in whole or in part the order, and

Paragraphs IX and X of the order, of the Interstate Commerce Commission of date July 7, 1916, pending the final hearing of Equity 295, or the further orders of the Court, because said order, and the various parts thereof, were and are void and unenforcible for each and all of the reasons pleaded and assigned in the various sub-paragraphs of subdivision XII of these Defendants' "Reply and Answer to Plaintiffs' Second Supplemental Bill of Com-
687 plaint," here referred to and made a part hereof, which reasons, in brief, are as follows:

1. The order contravenes the proviso of Section 1 of the Act to Regulate Commerce, wherein intrastate commerce is defined.

2. The order is too indefinite as to the territory to which it might lawfully apply, and the territory commercially tributary to Shreveport, Louisiana, to be enforcible.

3. There can be no interstate shipment between Shreveport, Louisiana, and any Texas point which does not move more than twenty miles, and the order insofar as it undertakes to prescribe interstate rates for twenty miles, or less, shipments and to make the same the measure of the State rates for such distances, is void.

4. The Interstate Commerce Commission based material portions of the order upon grounds and reasons which it had no lawful right to consider, to-wit: the prevention of discrimination against intrastate commerce, growing out of intrastate rates and commerce; and the question of the adequacy of the State rates.

5. The order, as construed by the Plaintiffs and the Court, undertakes to produce, and inevitably does result in, manifold unjust discriminations against Texas localities and shippers.

6. In addition to the assumption of powers not possessed, the Interstate Commerce Commission, in making the order exercised the powers possessed by it in an unreasonable, harsh and arbitrary manner so as to render the order void.

(Signed) B. F. LOONEY,
Attorney General of Texas;
LUTHER NICKELS,
Assistant Attorney General of Texas,
Defendants, Pro se.

Endorsed: Equity No. 295. Eastern Texas R. R. Co. et al., Plaintiffs, vs. Railroad Commission of Texas, et al., Defendants. In the District Court of the United States for the Western District of Texas, Austin, Texas. Assignments of Error. Filed September 22, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

688 *Bond on Appeal.*

Filed October 5, 1917.

In the District Court of the United States for the Western District of Texas, Austin, Texas.

Equity, 295.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Bond on Appeal.

Know all men by these presents: That we, B. F. Looney and Luther Nickels, as principals, and the other subscriber, as surety, are held and firmly bound unto the Eastern Texas Railroad Company and each and all of the persons and corporations named as plaintiffs in said Plaintiffs' Supplemental Bill of Complaint filed in the above styled and numbered cause in the full and just sum of One Thousand Dollars, ($1,000.00), to be paid to the said Eastern Texas Railroad Company and each and all of the Companies and persons named as plaintiffs aforesaid, their successors or assigns, for the payment of which well and truly to be made we bind ourselves and each of us, *are* and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this the 4th day of October, A. D. 1917.

Whereas, lately on September 22nd, 1917, in the District Court of the United States for the Western District of Texas, at Austin, Texas, in a suit pending in said Court between said Eastern Texas Railroad Company and the other persons and corporations named in Plaintiffs' Second Supplemental Bill of Complaint, as aforesaid, Plaintiffs, and B. F. Looney, Attorney General of Texas, and Luther Nickels, Assistant Attorney General of Texas, Defendants, numbered 295, a decree was rendered against the said defendants, B. F. Loony and Luther Nickels, as aforesaid; and—

689 Whereas, the above named B. F. Looney and Luther Nickels, aforesaid, have prosecuted an appeal to the Supreme Court of the United States to reverse said decree rendered in the above styled and numbered suit, granting plaintiffs an interlocutory injunction as prayed in their bill against said defendants;

Now, therefore, the condition of this obligation is such that if the above named B. F. Looney, and Luther Nickels, as aforesaid, shall prosecute said appeal to effect and answer all demands and costs if

they fail to make such appeal good, then this obligation shall be void; otherwise same shall remain in full force and virtue.

(Signed) B. F. LOONEY,
Principal.
LUTHER NICKELS,
Principal.
R. H. KIRBY, *Surety.*

Approved:
D. H. HART,
United States District Clerk,
By A. B. COFFEE, *Deputy.*

THE STATE OF TEXAS,
County of Travis:

Before me L. C. Sutton, a Notary Public in and for Travis County, Texas, on this day personally appeared B. F. Looney, Luther Nickels and R. H. Kirby, known to me to be the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 4th day of October, A. D. 1917.

(Signed) L. C. SUTTON,
[SEAL.] *Notary Public in and for*
Travis County, Texas.

Endorsed: Equity 236. In the District Court of the United States for the Western District of Texas, Austin, Texas. Eastern Texas Railroad Company et al., Plaintiffs, vs. Railroad Commission of Texas et al., Defendants. Bond on Appeal. Filed October 5, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

690 *Waiver of Issuance and Service of Citation.*

Filed September 22, 1917.

In the District Court of the United States for the Western District of Texas, Austin, Texas.

Equity, 236.

EASTERN TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants.

Waiver of Issuance of Citation and Service Thereof on Appeal.

Come now the Eastern Texas Railroad Company, and each and every of the other plaintiffs in the above styled and numbered cause,

by their Solicitors herein, and waive the issuance of citation on appeal, and agree to appear and otherwise act herein as though citation had been issued and served upon them, respectively.

(Signed) V. L. BROOKS,
HIRAM GLASS,
J. W. TERRY,
H. M. GARWOOD,
Solicitors for Plaintiffs.

Endorsed: Equity No. 295. Eastern Texas R. R. Co. et al., Plaintiffs, vs. Railroad Commission of Texas, et al., Defendants. In the District Court of the United States for the Western District of Texas. Waiver of issuance of Citation and service thereof on appeal. Filed Sept. 22, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

491-2 *Precipe and Agreements as to Documents Which Shall Constitute the Record on Appeal.*

Filed September 27, 1917.

In the District Court of the United States for the Western District of Texas, Austin Division.

Equity, No. 295.

EASTERN TEXAS RAILROAD COMPANY et als., Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS et als., Defendants.

Agreements as to Documents Which Shall Constitute the Record on Appeal.

The Clerk will include the following named documents in the Transcript of the Record to be filed in the Supreme Court of the United States, to-wit:

1. Plaintiffs' Second Supplemental Bill of Complaint, and Exhibits thereto;

2. Reply and Answer of Defendants Looney and Nichols filed August 8th, 1917;

3. Trial Amendment of Defendants Looney and Nichols filed September 21st, 1917, and order thereon;

4. Judgment of the Court of date September 22nd, 1917; and all former orders of the Court in No. 295, Equity.

5. Order of Judge Batts permitting Plaintiffs' Second Supplemental Bill to be filed and setting same down for hearing; Supplemental Bill of Complaint and Sub. Petn. Intervention Gulf, Tex. & Western Ry., et al.

6. Order of Judge Batts setting cause for hearing for Septem
20th, 1917, and calling together three Judges; and all opinions
dered in the case.

7. Statement of Evidence on Appeal,—to consist of: (1) A
pleadings in Equity 295, with exhibits, except pleadings of the
tervening merchants' traffic associations, etc., but including int
vening petition of Gulf, Texas & Western Ry. Co., et als., filed O
tober 31st, 1916, and intervening petition of the Railroad Co
mission of Louisiana;

(2) Portion of brief filed by Attorney General with the thr
Judges at New Orleans on the occasion the hearing for temporar
injunction at that place;

(3) Proceedings before Suspension Board of the Interstate Co
merce Commission, including petition and briefs filed the
698 by the Attorney General of Texas and Judge S. H. Cow
including telegram from Attorney General Looney to Int
state Commerce Commission asking for suspension, etc., of order
I. C. C. of date July 7th, 1916;

(4) Order of the Commission setting aside rates on live stoc
lignite, wood and tan bark and setting for hearing December 6
question of whether the Shreveport case should be reopened, et

(5) Order of Commission of date July 7th, 1916;

(6) Order of Commission of date January 20th, 1917; granti
a rehearing;

(7) Order of Commission on original application of Railro
Commission of Louisiana of date March 11th, 1912;

(8) Order of Commission on Supplemental petition of Railro
Commission of Louisiana of date June 17, 1915;

(9) Notice issued by Commission designating list and order
subject that would be considered at rehearing;

(10) Testimony of the following witnesses on rehearing held
Examiner Thurtell as follows:

Gentry Waldo, Pages 4180-4196-5817-5820, and Exhibit 1.
C. B. Payne, Pages 4539-4556, and Exhibit 2.
L. M. Hogsett, Pages 4598-4627.
A. S. Stinnett, Pages 2180-2214.
E. B. Maxwell, Pages 1887-1890.
C. C. Dana, Pages 4341-4441.
U. S. Faucett, Pages 4755-4759.
O. D. Hudnall.

(11) All petitions of the Railroad Commission of Louisiana
the original and supplemental hearings before the Interstate Co
merce Commission.

The documents and portions thereof mentioned as to be include
in the evidence on Appeal have been included in the agreed stat
ment of the Evidence on Appeal filed by the parties hereto.

8. Petition for Appeal and allowance thereof;

9. Assignments of Error filed by Defendants;

10. Appeal Bond filed by Defendants Looney and Nichols, a
approval thereof.

11. Waiver of issuance and service of citation on appeal;

11. Agreed Precipe and list of documents to be included in the Record on Appeal;

891 (Signed) B. F. LOONEY,
LUTHER NICKELS,
Defendants, Pro Se;
J. W. TERRY,
H. M. GARWOOD,
E. B. PERKINS,
A. H. McKNIGHT,
HIRAM GLASS,
Solicitors for Plaintiffs.

Endorsed: Equity No. 295. In the District Court of the United States for the Western District of Texas, Austin Division. Eastern Texas Railroad Company, et al., Plaintiffs, vs. Railroad Commission of Texas, et al., Defendants. Precipe and agreements as to documents which shall constitute the Record on Appeal. Filed Septr. 27, 1917. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

Clerk's Certificate.

I, D. H. Hart, Clerk of the United States District Court for the Western District of Texas, do hereby certify that the foregoing, on 751 pages numbered from 1 to 71 and 71-P to 128-P and 72 to 693, inclusive, contain a true and correct transcript of the proceedings had and orders entered, as therein stated, in cause No. 295, Equity, styled Eastern Texas Railroad Company, et al., vs. Railroad Commission of Texas, et al., on the hearing of the prayer for injunction embraced in the Second Supplemental Bill of Complaint, as the same appear on file and of record in this office.

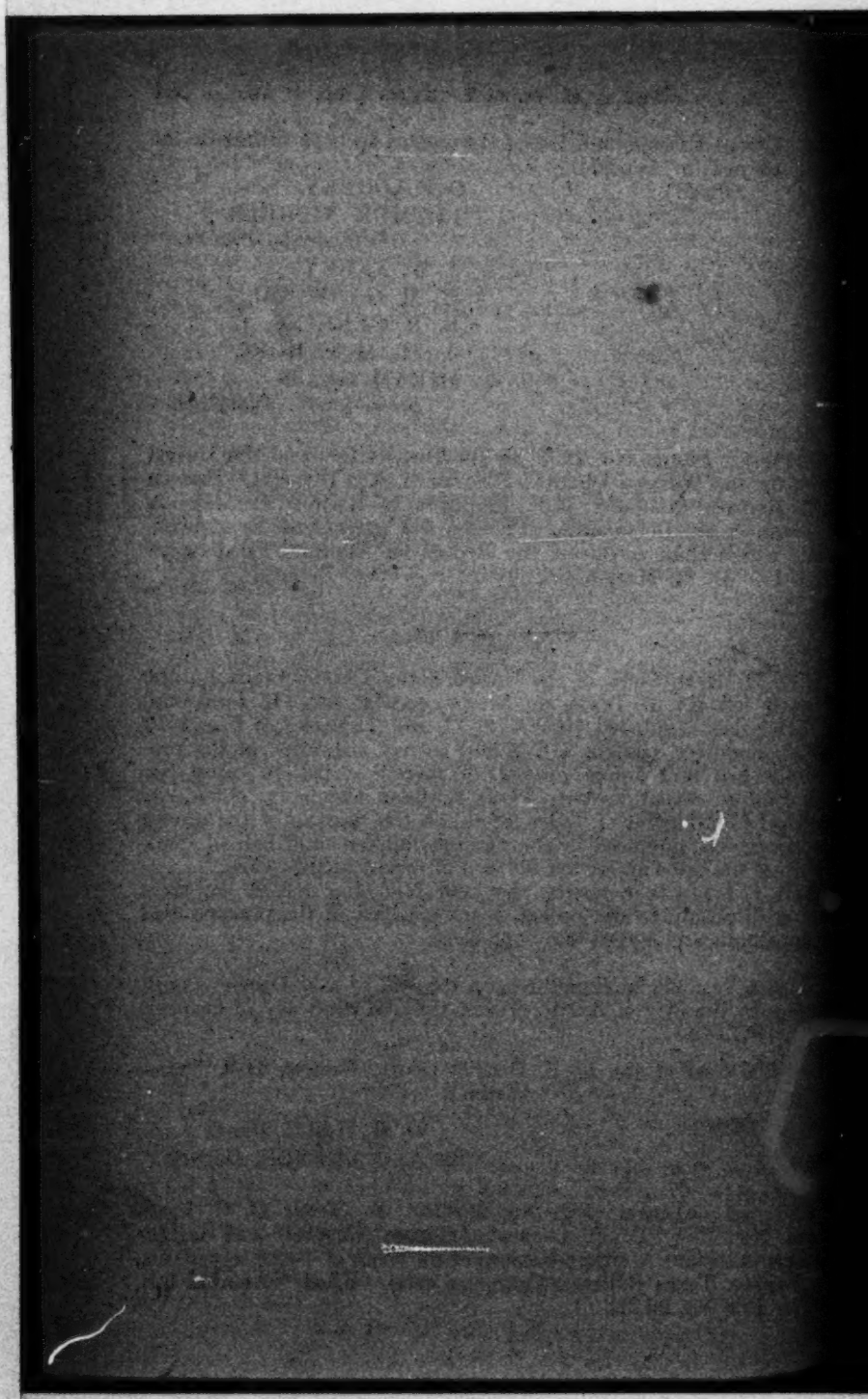
And I do further certify that the foregoing record embraces only such pleadings and orders as are specified in the precipe filed by appellants and agreed to by appellees.

Witness my official signature and the seal of said District Court, at office in the City of Austin, Texas, this the 22nd day of October, A. D. 1917.

[The Seal of the U. S. District Court, Western Dist. Texas, Austin.]

D. H. HART, *Clerk*,
By A. B. COFFEE, *Deputy*.

Endorsed on cover: File No. 26,222. W. Texas D. C. U. S. Term No. 756. B. F. Looney, Attorney General, and Luther Nickels, Assistant Attorney General of the State of Texas, appellants, vs. Eastern Texas Railroad Company et al. Filed November 9th, 1917. File No. 26,222.



A207-118-75

No. 756.

In the Supreme Court of the United States

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL, OF THE STATE OF TEXAS, APPELLANTS,

VS.

EASTERN TEXAS RAILROAD COMPANY ET ALS., APPELLEES.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

APPELLANTS' MOTION TO ADVANCE.

To the Honorable the Supreme Court of the United States:

Come now the appellants in the above styled and numbered cause and move, and pray, that said cause be advanced for submission and hearing, and as reasons therefor they show unto the Court the following, towit:

I.

The proceedings had in the cause were under the provisions of Section 266 of the Judicial Code and 38 Stat. at Large, page 219.

II.

The basis of this cause is an order made by the Interstate Commerce Commission on July 7, 1916, effective November 1, 1916, and the carriers' construction and application of such order. Claiming that such order authorized them to supersede the

State-made rates on classes and a very large number of commodities between practically all points in Texas, the carriers prepared and filed a tariff to that effect and brought a suit in the District Court of the United States for the Western District of Texas to enjoin the Railroad Commission of Texas, the Attorney General of Texas, and others with notice, from interfering with the collection of such rates on intrastate shipments, alleging that if they were permitted to charge the rates in said tariff contained in lieu of the Texas rates for intrastate shipments their revenues would be thereby increased several million dollars per year. (Record, p. 125.) The prayer of the original bill was for permanent injunction and for an interlocutory injunction restraining the Attorney General, the Railroad Commission et al., from instituting or prosecuting suits to interfere therewith. (Record, pp. 135 to 137.) On September 2, 1916, a restraining order was issued by Hon. Don A. Pardee, United States Circuit Judge, at Atlanta, Georgia (pages 137, 138); afterwards a bench of three judges was convened at New Orleans on April 4, 1917, to hear and pass upon the application for temporary injunction, and as a result of such hearing said three judges, towit: Hon. Don A. Pardee, R. W. Walker, and R. L. Batts, all United States Circuit Judges, at New Orleans, on the 20th day of April, 1917, entered an order purporting to be in the cause, restraining the Attorney General of Texas, the Railroad Commission, and others, from "claiming or instituting, or causing to be instituted, suit or suits, civil or criminal, against plaintiffs and intervenors, or either or any of them, or their or its officers or agents, FOR THE RECOVERY OF ANY DAMAGES, OVERCHARGES, PENALTY, FINES, OR PENALTIES thereunder, by virtue of Chapter 15, Title 15, of the Revised Civil Statutes of the State of Texas, or any other statute thereof, for failure of plaintiffs or intervenors, or either of them, to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, WHEN SAID RATES, RULES, ORDERS

AND CLASSIFICATIONS ARE IN CONFLICT WITH THE RATES AND CLASSIICATIONS PRESCRIBED AND AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION BY SAID ORDER OF JULY 7, 1916, or for the charging by plaintiffs, or any, or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916." (Record, pp. 109, 110.) It being expected that the case would come on for trial upon its merits in June, 1917, and on account of the voluminous record introduced before the three judges at New Orleans, an appeal was not taken from such order; but when the case was called for trial in the district court at the June term the carriers filed a motion for continuance (Record, p. 79), which, over the protest of the appellants herein and the Railroad Commission of Texas, was granted.

The appellants herein, taking the view that the aforesaid order entered at New Orleans, even if valid, only purported to restrain the institution of suits "for the recovery of penalties, etc." * * * "for failure of plaintiffs or intervenors * * * to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas * * * WHEN SAID RATES, RULES, ORDERS AND CLASSIFICATIONS ARE IN CONFLICT WITH THE RATES AND CLASSIFICATIONS PRESCRIBED AND AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION BY SAID ORDER OF JULY 7, 1916," and taking the view that said order of the Interstate Commerce Commission did not purport to authorize the intrastate rates hereinafter mentioned, on July 20, 1917, filed a suit in the State district court of Travis county, Texas, alleging that the carriers were charging "Differential Rates" on shipments moving for distances of 351 miles, or less, between points within the State in excess of those prescribed therefor by law, and by the Railroad Commission of Texas (Record, pp. 15 to 37), and praying for an injunction to prohibit such conduct, and praying for

an interlocutory injunction pendente lite. (Record, pp. 22, 23.) The hearing on this latter prayer was set by the State district court for August 6, 1917 (Record, p. 14), and notice thereof given the carriers. On August 14, 1917, the appellee carriers filed in the United States District Court for the Western District of Texas what they called their second supplemental bill of complaint purporting to allege the history of the aforesaid order of the Interstate Commerce Commission and the proceedings at New Orleans, as mentioned above, and the institution of said suit in the State court and seeking an injunction to restrain the appellants herein from the further prosecution of said suit (Record, pp. 1 to 15.) This second supplemental bill of complaint was presented to Hon. R. L. Batts, United States Circuit Judge, at Austin, on August 4, 1917, and he thereupon set for hearing the prayer for temporary injunction for August 9, 1917. (Record, p. 59.) On August 9th, the appellants herein filed their answer to said second supplemental bill of complaint (Record, pp. 37 to 56) traversing the allegations of the bill and affirmatively alleging various matters of defense. In this answer it was suggested to Judge Batts that the appellants were sought to be restrained from acting as officers of the State in the enforcement of the laws of the State and the orders of the Railroad Commission of Texas, and that the enforcement, operation and execution of the statutes of the State and of the orders of the Railroad Commission of Texas were sought to be restrained by restraining the action of appellants under such statutes and orders; it was further suggested that matters of defense alleged in appellants' answer presented an attack upon said order of the Interstate Commerce Commission in the alternative; and that it would be necessary to convene a bench of three judges, as provided for in Section 266 of the Judicial Code and in 38 Stat. at Large, page 219. (Record, p. 38.) Thereupon Judge Batts reset the hearing for September 20, 1917, and stated that he would call to his assistance two other judges to sit in the hearing, the appellants

agreeing not to prosecute the State court suit pending the hearing. (Record, p. 16.)

The United States and the Interstate Commerce Commission were made parties to the litigation in September, 1916, and the United States on April 4, 1917, filed its "SPECIAL APPEARANCE AND MOTION." (Record, p. 566.) On September 6, 1917, the appellants herein, by mail, sent to the Attorney General of the United States and the Interstate Commerce Commission copies of their answer to appellees' second supplemental bill of complaint, together with copies of the orders of Judge Batts, setting the matters in the bill and answer contained for hearing on the 20th day of September, 1917. (Record, pp. 566, 567.)

On September 20, 1917, said bill and answer came on for hearing before the three judges at Austin, and as a result of the hearing the order from which the appeal in this case is prosecuted was entered. (Record, pp. 57, 59.)

Under the carriers' construction of the order of the Interstate Commerce Commission the rates on substantially all shipments moving within, into, out of, or through "Differential Terrritory" in Texas (comprising some one hundred thousand square miles) are very greatly increased both over the intrastate rates applicable thereto and over the interstate rates paid by the shippers of Shreveport, Louisiana, for the transportation of like kinds of property for like distances, Shreveport, Louisiana, being the complaining locality upon whose petition the order, in part at least, was made. Appellants take the position that the order of the Interstate Commerce Commission cannot reasonably be so construed, and that if it is susceptible to such construction it is unenforcible and void for the various reasons pointed out in appellants' answer and in their briefs herein. The increased rates have been charged since November 1, 1916.

Because of the nature of the questions presented and the very material results to the shippers in a large portion of Texas, appellants submit that the matter embraced in the appeal is of

such public importance and interest as to warrant the advancement of the case.

III.

The case has been briefed by appellants.

Wherefore, appellants pray that the cause be advanced for submission and set for hearing for the earliest practicable date.

Respectfully submitted,

[illegible]
Attorney General.

[illegible]
Assistant Attorney General, Pro Se, and
Attorneys for Appellants.

Appellees hereby join in the foregoing "Motion to Advance."

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Attorneys for Appellees, Eastern Texas Railroad Co. Et Als.

IN THE

SUPREME COURT

OF THE UNITED STATES

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL OF THE STATE OF TEXAS,
Appellants,

vs.

EASTERN TEXAS RAILROAD COMPANY ET AL.,
Appellees.

No. 756

Appealed from the District Court of the United States for the Western District of Texas

REPLY OF APPELLEES TO APPELLANTS' MOTION TO ADVANCE

To the Honorable, the Supreme Court of the United States:

Herein come appellees, and by way of reply to the motion of appellants filed herein to advance this cause for submission and hearing, say that while they do not object to such early submission and hearing hereof as may be deemed proper, that the matters in-

volved herein are of no such public importance or interest as to warrant the advancement of the case, and upon such issue appellees say:

I.

The proceedings had in this cause are not properly cognizable under the provisions of Section 266 of the Judicial Code of the United States; that the appeal herein is from an interlocutory order granting a temporary injunction against appellants, restraining them from the prosecution of a suit in the District Court of Travis County, Texas, upon the ground that the District Court of the United States for the Western District of Texas by suit theretofore filed therein had taken jurisdiction of the same matter; that the enforcement of no statute of the State of Texas is herein sought to be enjoined upon allegation of its unconstitutionality, nor is the enforcement of the order of any administrative body or commission based upon any statute of the State of Texas sought to be restrained or enjoined upon the ground of the unconstitutionality of such statute, and that the issue as to whether the trial court herein properly exercised its judicial discretion in enjoining proceedings involving a subject-matter whereof the Federal District Court for the Western District of Texas had theretofore acquired and exercised full jurisdiction presents no question of public importance or of general interest.

II.

The appeal herein is from an interlocutory injunction temporarily restraining the prosecution of a suit in the State Court upon the grounds set out above, and the determination of this appeal will not advance the final determination of the matters involved in Equity Cause No. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., pending in the District Court of the United States for the Western District of Texas, being the original cause to which this proceeding is merely ancillary.

III.

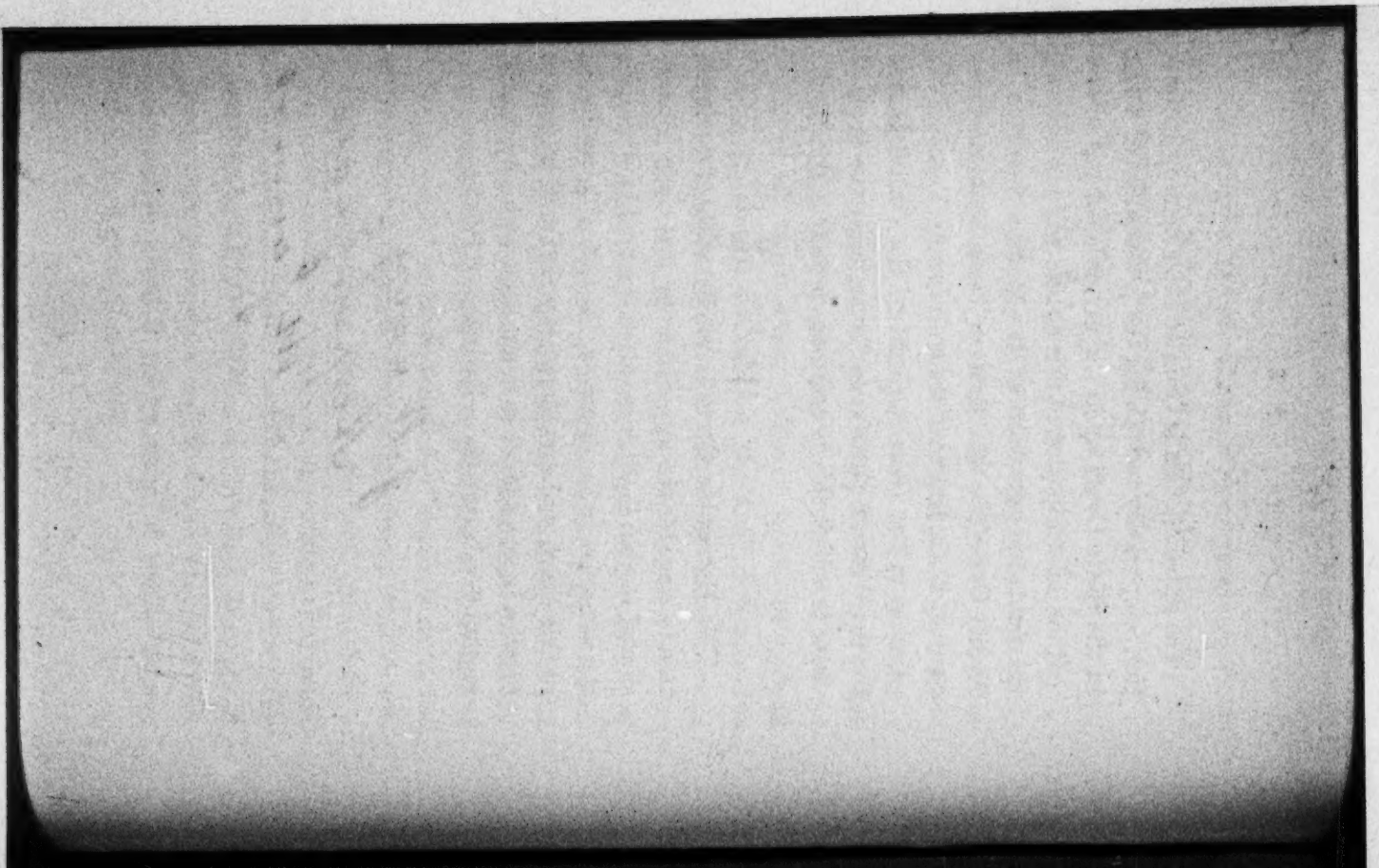
This Honorable Court is wholly without jurisdiction to consider the appeal herein, and upon submission of motion to dismiss this cause filed by appellees the same should be dismissed, for lack of jurisdiction in this court, and appellees pray that said motion to dismiss be considered in connection with appellants' motion to advance the submission of this case.

J. R. Terry

Marvin Glass

H. M. Garwood

Attorneys for Appellees.



IN THE

SUPREME COURT

OF THE UNITED STATES

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL OF THE STATE OF TEXAS,
Appellants,

vs.

EASTERN TEXAS RAILROAD COMPANY ET AL.,
Appellees.

No. 756

Appealed from the District Court of the United States for the Western District of Texas

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APPELLEES' MOTION TO DISMISS

To the Honorable, the Supreme Court of the United States:

Herein come Eastern Texas Railroad Company and others, appellees herein, and leave of this Honorable Court first having been had, move that the appeal herein be dismissed, and for cause say:

The order appealed from herein is an interlocutory order granting a temporary injunction against ap-

pellants B. F. Looney, Attorney General, and Luther Nickels, Assistant Attorney General, of the State of Texas, restraining them from prosecuting a certain cause in the District Court of Travis County, Texas, wherein the State of Texas, by B. F. Looney, Attorney General, is plaintiff, and appellees herein are defendants, the same being numbered 34,832 on the docket of said State District Court, upon the ground that the District Court of the United States for the Western District of Texas, in Equity Cause No. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., wherein appellees herein are complainants, and B. F. Looney, appellant herein, and others, are defendants, filed therein long prior to the institution of said suit in the State Court in the District Court of Travis County, Texas, had acquired full jurisdiction of the subject-matter involved, as well as of the persons of the parties litigant in said suit in said District Court of Travis County, Texas, which said suit is, therefore, an interference with the jurisdiction and the processes of the District Court of the United States in said Equity Cause No. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al.

That while this appeal purports to be lodged in this court under Section 266 of the Judicial Code, which, in cases properly cognizable thereunder, allows an appeal from interlocutory orders direct to this court, the provisions of said Section 266 have no proper ap-

plication hereto, for that no injunction was asked, considered or granted suspending the enforcement, operation or execution of any statute of the State of Texas, or the enforcement or execution of any order made by any administrative board or commission acting under or pursuant to the statutes of the State of Texas, upon the ground of the unconstitutionality of such statute, the sole and only ground upon which such temporary injunction was asked and granted being that the suit in the State District Court of Travis County, Texas, prosecution whereof was restrained, being that jurisdiction of the subject-matter thereof as well as of the persons of the parties litigant had theretofore been fully acquired by the District Court of the United States for the Western District of Texas, in Equity Cause No. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al.

That in so far as an appeal is sought from that portion of said interlocutory order denying the prayer of appellants to restrain the enforcement of the order of the Interstate Commerce Commission of date July 7, 1916, in whole or in part, neither the Government of the United States nor the Interstate Commerce Commission were made parties to this proceeding, had no notice thereof, and did not appear or make themselves parties thereto, and such prayers were, therefore, not properly before the court below, and could not be by it considered.

Wherefore, appellees say that the order appealed from being interlocutory and not final, this Honorable Court is wholly without jurisdiction in the premises, and prayer is made that this appeal therefrom be dismissed.

J. W. Terry

Hiram Gluss

N. M. Garrard

Solicitors for Appellees.

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IN THE

SUPREME COURT

OF THE UNITED STATES

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL OF THE STATE OF TEXAS,
Appellants,

vs.

EASTERN TEXAS RAILROAD COMPANY ET AL.,
Appellees.

No. 756

Appealed from the District Court of the United States for the Western District of Texas

BRIEF ON MOTION TO DISMISS BY APPELLEES

Statement of the Case.

This cause involves an appeal from an interlocutory order entered herein by Honorable R. L. Batts, Circuit Judge of the Fifth Circuit, Honorable Gordon Russell, District Judge of the United States for the Eastern District of Texas, and Honorable W. R. Smith, District Judge of the United States for the Western District of Texas, on the 22d day of Septem-

ber, 1917, restraining appellants B. F. Looney and Luther Nickels, respectively Attorney General and Assistant Attorney General of the State of Texas, from further prosecution of Cause No. 34,832 in the District Court of Travis County, Texas, wherein the State of Texas, by B. F. Looney, Attorney General, appellant herein, is plaintiff, and the Eastern Texas Railroad Company and others, appellees herein, are defendants.

Said suit prosecution whereof is temporarily enjoined by said interlocutory order of date September 22, 1917, was filed in the District Court of Travis County, Texas, on July 20, 1917, and sought to enjoin these appellees, defendants therein, from charging certain freight rates in what is called "differential territory" in Texas, in accordance with their interstate Tariff 2-B, upon the ground that the same were not authorized by the order of the Interstate Commerce Commission of date July 7, 1916, made and entered by said Commission in the case of Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway Company et al., I. C. C. No. 8418, in which said suit temporary injunction was asked against the defendants, who are appellees herein, and hearing on such application for temporary injunction was ordered before Judge George Calhoun, District Judge of Travis County, Texas, on August 6, 1917. The defendants in said suit, who are appellees herein, on August 4, 1917, filed their second sup-

plemental bill of complaint in the nature of an ancillary bill in Equity Cause 295 pending in the District Court of the United States for the Eastern District of Texas, styled Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., against said B. F. Looney, Attorney General, and Luther Nickels, Assistant Attorney General, appellants herein, alleging that said original bill had been filed in the said District Court of the United States for the Western District of Texas, on September 4, 1916; that the defendants in the suit filed in the State Court were complainants in said original bill, and that the said B. F. Looney, Attorney General of the State of Texas, together with the Railroad Commission of Texas, and others, were defendants in said original bill; that in said original bill it was, among other things, alleged that the Interstate Commerce Commission in Cause No. 8418, Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway Company et al., had, on July 7, 1916, made and published its order prescribing certain rates, rules and practices applicable between Shreveport and Texas points, and between points within the State of Texas, which order these appellees, who were defendants in said proceeding before the Interstate Commerce Commission, were commanded to make effective on November 1, 1916; that appellees were preparing tariffs in obedience to said order of the Interstate Commerce Commission, which they intended to file

with the said Commission in accordance with law, and enforce the same on and after November 1, 1916, as by said order required. That said order required complainants (appellees here) to install rates within the State of Texas higher in many instances than the rates required by the Railroad Commission of Texas; that said Railroad Commission of Texas and said B. F. Looney, Attorney General, were threatening to file numerous suits for confiscatory penalties against complainants, appellees herein, should they seek to apply the rates prescribed by said order of the Interstate Commerce Commission, and injunctive relief, temporary and permanent, was sought. (See original bill, Tr., 111.)

Said original bill of complaint was presented to Circuit Judge Pardee, who, on September 2, 1916, issued his restraining order thereon as prayed for, and set the hearing upon the application for temporary injunction for September 28, 1916. (Tr., 61.)

This hearing upon application for temporary injunction was upon application of the Railroad Commission of Texas and said B. F. Looney continued from time to time until April 4, 1917, when it was set down for hearing at New Orleans before Circuit Judges Pardee, Batts and Walker. (Tr., 62-63.)

In the meantime, to wit, on September 25, 1916, the plaintiffs in said original cause Equity 295 had filed with the Interstate Commerce Commission their Tariff 2-B, I. C. C., 38, as in full compliance with the or-

der of the Interstate Commerce Commission of date July 7, 1916, and said B. F. Looney, Attorney General, acting for the State of Texas, had filed with the Interstate Commerce Commission his application to suspend and set aside said Tariff 2-B, alleging that the same in the identical particular complained of in said suit No. 34,832, filed in the State Court, and herein enjoined, was not in accord with said order of the Interstate Commerce Commission, which application was heard by the Suspension Board and by the Interstate Commerce Commission, and by it overruled, and said tariff had become effective on November 1, 1916, and thereafter, on December 6, 1917, the Railroad Commission of Texas and B. F. Looney, Attorney General, presented to the Interstate Commerce Commission an application to set aside its order of July 7, 1916, and said Tariff 2-B, which the Interstate Commerce Commission, by order of July 26, 1917, refused to do, but granting a re-hearing, ordering, however, said tariff, pending such re-hearing, to remain in full force and effect. (Tr., 391-407; 412.)

The Railroad Commission of Texas and the said B. F. Looney filed answer in said original cause, Eq. 295, wherein they attacked the validity of said order of the Interstate Commerce Commission of July 7, 1916, in whole and in part, and having made the Government of the United States and the Interstate Commerce Commission parties defendant, asked affirm-

ative relief, declaring such order void in whole and in part. (See original answer of Railroad Commission and Attorney General in Cause Eq., 295, Tr., 194, and first amended answer in same cause, Tr., 249.)

By first supplemental bill in said cause, Eq. 295 (Tr., 244), complainants therein, appellees here, set up that since the filing of the original bill the complainants had filed with the Interstate Commerce Commission their Tariff 2-B, I. C. C. 33, which was filed as an exhibit to said supplemental bill, and that the same was in all things in accord with the order of July 7, 1916, and that the Interstate Commerce Commission had, by the proceedings above mentioned, twice construed its said order of July 7, 1916, and held that the said tariff was in accordance therewith. This supplemental bill, repeating the prayers of the original bill, asked injunction, temporary and permanent, against all interference with complainants in said original bill, appellees here, in their application of such tariff and in their obedience to the order of the Interstate Commerce Commission.

The said B. F. Looney, Attorney General, and said Railroad Commission of Texas, filed in said original cause their first supplemental answer (Tr., 337), and especially denied that the said tariff was in accordance with said order.

With the pleadings in this condition, hearing was had on April 4, 1917, before the three Circuit Judges

mentioned, upon the application of complainants, appellees here, for temporary injunction. On this hearing B. F. Looney, appellant herein, defendant in said proceeding, asked that the order of the Commission, in whole or in part, be suspended pending either the trial of that cause upon its merits or pending the final action of the Interstate Commerce Commission upon the application for a re-hearing, and if thought necessary, Texas Lines Fonda Tariff 2-B be likewise suspended. He states:

> "All necessary parties are before the court. The pleadings present the issues and prayers, and the court has full power to grant this relief." (Tr., 342.)

Upon this hearing the entire record before the Interstate Commerce Commission, and upon which all of its orders in the Shreveport case, including the order of July 7, 1916, was introduced in evidence. (Tr., 69-73.)

On April 20, 1917, the three judges ordered the issuance of temporary injunction (Tr., 109-110) as follows:

> "Whereupon, on consideration of the law and the evidence, and the order of the Interstate Commerce Commission of July 7, 1916, and for the reasons filed herewith, it is ordered that a temporary injunction issue, as prayed for, enjoining and restraining during the pendency of these actions, or until further order by the court, the defendants and each of them, and all other officers, individuals, agents, or employes, from

claiming or instituting, or causing to be instituted, suit or suits, civil or criminal, against plaintiffs and interveners, or either or any of them, or their or its officers or agents, for the recovery of any damages, overcharges, penalty, fines or penalties thereunder, by virtue of Chapter 15, Title 115, of the Revised Civil Statutes of the State of Texas, or any other statute thereof, for failure of plaintiffs or interveners, or either of them, to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said order of July 7, 1916, or for the charging by plaintiffs, or any, or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916, and further to restrain the said Railroad Commission of Texas, and said Allison Mayfield, Charles H. Hurdleston, and Earle B. Mayfield, and their successors in office, from furnishing to any person or persons, copies, certified or otherwise, of any of said tariffs of rates, circulars, schedules, rules, orders and classifications, or of the orders establishing the same, of the Railroad Commission of Texas, against which relief is herein prayed for, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that plaintiffs and interveners, or either or any of them, their or its officers and agents have not observed, and do not observe and obey said tariffs of rates, circulars, sched-

ules, rules, orders and classifications of the Railroad Commission of Texas herein complained of, where the same are in conflict with the rates and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916, and from requesting or authorizing the Attorney General or any other officer of the State of Texas to institute any proceedings against plaintiffs or interveners, or either or any of them, their or its officers and agents, for failure to obey or for disregarding said tariffs of rates, circulars, schedules, rules, orders and classifications of said Railroad Commission of Texas."

During the months of May and June, 1917, testimony was taken before the Examiner of the Interstate Commerce Commission in the re-opened case No. 8418, Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway Company et al., and the same is now pending before the Interstate Commerce Commission for final determination.

In this state of the record in said original cause Eq. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., appellants, B. F. Looney and Luther Nickels, having, as above stated, filed their suit 34,832, in the District Court of Travis County, Texas, seeking to enjoin the application of the rates prescribed in said Tariff 2-B within differential territory in the State of Texas, appellees herein, who were defendants in said suit in the State Court, and complainants in said original cause Eq. 295, filed their second supplemental or ancillary bill in said original suit (Tr., 1-37) attaching as ex-

hibit thereto the petition of appellants in the State Court. This ancillary bill set up in detail all the facts hereinabove set forth, and showing that the subject-matter of the suit in the State Court was fully embraced, and issue made directly thereon in the pleadings and proceedings in the original cause.

Appellants, on August 7, 1917, filed an amendment to their petition in the State Court. (Tr., 502-504.)

In their said supplemental bill appellees asked that restraining order be at once granted restraining said defendants B. F. Looney, Attorney General, and Luther Nickels, Assistant Attorney General, their associates, and all other persons, from prosecuting said suit 34,832 in the said District Court of Travis County, Texas; from instituting or prosecuting any similar suit in said District Court, or in any other court than the United States District Court for the Western District of Texas, and from in any way or manner whatsoever attempting to interfere with or prevent plaintiffs from charging the rates prescribed in said Texas Lines Tariff 2-B and supplements thereto, and that upon hearing hereof an injunction be granted restraining the said defendants and all other persons as prayed for above, and that on final hearing such injunction be made perpetual, and for all other and further relief as may be proper in the premises.

Judge Duval West, District Judge of the United States for the Western District of Texas, being dis-

qualified, and Judge W. R. Smith, District Judge of the United States for the Western District of Texas, being absent from the district and the State, this ancillary bill was presented on August 4, 1917, to Circuit Judge R. L. Batts, who ordered the same filed and set for hearing on application for temporary injunction before him in chambers at Austin on August 9, 1917. (Tr., 59.)

On that date appellants filed their second supplemental answer (Tr., 37-54), wherein, after denying the equities of the bill, they attacked the order of the Interstate Commerce Commission of July 7, 1916, upon substantially the same grounds set up in their original and amended answers in the original cause Eq. 295, contending that said order was void in whole or in part, and concluding with the following prayer:

> "Wherefore, for each and all of the reasons and premises above set forth, these defendants pray that all relief prayed for by plaintiff be denied, and that said supplemental bill of complaint be dismissed for lack of equity, and that said order and such portions of the same be set aside."

Neither the Government of the United States nor the Interstate Commerce Commission was made a party defendant. It is true that letters were addressed by appellant Nickels to the Interstate Commerce Commission and to the Attorney General of the United States on September 6, 1917 (Tr., 567), in which it is stated that a copy of this answer was en-

closed. It is admitted, however, that the copies of the answer so enclosed did not contain the following portion of the prayer above quoted, to wit:

> " * * and that said order and such portions of same be set aside." (Tr., 566-567.)

So that neither the Government of the United States nor the Interstate Commerce Commission were given notice of any prayer to set aside the order of the Interstate Commerce Commission, and neither the Attorney General of the United States for the Government, nor the Interstate Commerce Commission filed any pleadings or participated in the hearing.

In said answer it was in the first paragraph thereof (Tr., 38) suggested that the relief sought in plaintiffs' second supplemental bill of complaint is to suspend or restrain the enforcement, operation and execution of the statutes of Texas and the orders of the Railroad Commission of Texas by restraining the action of these defendants, officers of such State, and, therefore,

> "These defendants suggest that it will be necessary to convene a bench of three judges, as provided for in Section 266 of the Judicial Code, and in 38 Stat. at L., 219, to pass upon the application for injunction presented in said second supplemental bill of complaint and the motion herein presented, and pray that such action be taken, and that said application be set for immediate hearing."

On August 9, 1917, the day set by Circuit Judge

Batts for the hearing of the application for temporary injunction, the hearing was by agreement postponed until September 20, 1917, and in response to the suggestion of appellants that two additional judges should be called in under Section 266, Judge Batts, in his order of postponement (Tr., 60), states that on the day set, to wit, 20th day of September, 1917, he would call to his assistance two other judges to sit in the hearing.

Circuit Judge Batts having called to his assistance Judge Gordon Russell, District Judge of the United States for the Eastern District of Texas, and Judge W. R. Smith, District Judge of the Western District of Texas, hearing was had on September 20, 1917.

During the hearing defendants (appellants here) sought to amend their answer over objection of appellees by adding paragraphs thereto, seeking to assail the temporary injunction ordered by Judges Pardee, Walker and Batts on April 20, 1917, and which had not been appealed from, and praying that the order of the Interstate Commerce Commission be set aside in whole or in part. Appellees objected to the filing of this trial amendment upon the ground that it was a departure from the subject-matter embraced in the second supplemental bill, and that in so far as it sought to prevent the enforcement of the order of the Interstate Commerce Commission of July 7, 1916, either in whole or in part, the Government of the United States was a necessary party.

The court permitted the trial amendment to be filed, but held that same would be considered only in so far as it was pertinent to the construction and meaning of the order of the Interstate Commerce Commission. (Tr., 55-57.)

On September 22, 1917, the temporary injunction was granted as prayed for (Tr., 57-59) by order signed by the three judges. The order, omitting recitations, is as follows:

> "Whereupon, it is ordered, adjudged and decreed by the court that the prayer for injunction as in said second supplemental bill of complaint prayed for be and the same is hereby granted; and it is ordered and decreed by the court that the defendants B. F. Looney, Attorney General of the State of Texas, and Luther Nickels, Assistant Attorney General of the State of Texas, their associates, and all other persons, be and they are hereby restrained and enjoined from prosecuting said suit No. 34,832 in the District Court of Travis County, and from instituting or prosecuting any similar suit in said court, or in any other court than the United States District Court for the Western District of Texas, and from in any way or manner whatsoever attempting to interfere or prevent plaintiffs in said second supplemental bill of complaint herein from charging the rates prescribed in Texas Lines Tariff 2-B and supplements thereto.
>
> "It is further ordered by the court that all prayers for affirmative relief by said defendants herein be and the same are hereby denied."

The opinion in the case was rendered by Circuit Judge Batts (Tr., 79-80), and is as follows:

"After the decision in the Shreveport Case 234 U. S., 342, the Interstate Commerce Commission extended the territorial scope of the order sustained therein to all Texas. Thereupon the railroads filed Tariff 2-B, which included intrastate rates fixed, it was claimed, in compliance with the order. The validity of the order and the legality of the tariff being questioned, upon an application in this case by the railroad companies for an injunction to restrain penalty suits by the State, and upon a cross-bill, praying that the order be declared void, and that the tariff, in so far as it affected intrastate rates, be set aside. Circuit Judges Pardee, Walker and Batts granted the temporary injunction prayed for by complainants, and refused the relief asked by the cross-bill, basing action as to both matters upon the propriety of maintaining the status until the entire case could be considered and determined upon its merits. At the June term of this court an application by plaintiffs for a continuance based principally upon the fact that the matters involved were under further consideration by the Interstate Commerce Commission, was granted. Thereafter the Attorney General of Texas instituted a suit in the District Court of Travis County, Texas, to prevent the railroads from charging certain of the rates included in Tariff 2-B. Whereupon the railroad companies, plaintiffs or interveners herein, applied for an injunction to prevent the prosecution thereof.

"The subject-matter of the State suit is a part of that involved in this case. The jurisdiction of this court with reference thereto has been invoked by the parties plaintiff and defendant, and by interveners; the jurisdiction has been exercised by this court in granting an injunction at

the prayer of plaintiffs, and refusing one asked by defendants, and by considering and determining an application for a continuance. The purpose of the three judges mentioned, as expressed in the opinions filed, will be defeated by trial in the State Court. Jurisdiction having been conferred by law, having been invoked by all the parties, and having been exercised by the court, its protection is a right and duty not limited by Section 266 (5) J. C. The injunction prayed for by complainants is granted.

"In his answer herein, the Attorney General of Texas asked that the rates complained of in the State Court be set aside, as not required by the order of the Interstate Commerce Commission. This was before the three judges mentioned. Their judgment with reference thereto was not appealed from or otherwise attacked. But, waiving all questions as to the legality or propriety of modifying their action, our conclusion is that the present status should be maintained until such time as this court may consider all of the grave questions of law and all the great mass of facts connected with this complicated and important litigation. The fact that the matters involved are again before the interstate Commerce Commission, and that their action may affect the rates attacked, furnishes an additional reason for our conclusion. The relief asked by defendants is refused."

From this order defendants B. F. Looney and Luther Nickels have prosecuted their appeal to this court, and appellees have moved that the same be dismissed upon the ground that the order being interlocutory in its nature, and being a temporary injunction against the prosecution of the suit in the State

Court, no question of the constitutionality of any State statute is raised. Section 266 of the Judicial Code does not apply, and an appeal from this interlocutory order can only be had to the Circuit Court of Appeals of the Fifth Circuit.

ARGUMENT.

Section 266 of the Judicial Code provides that in applications thereunder an appeal may be taken direct to the Supreme Court of the United States from the order granting or denying an interlocutory injunction in such cases. The section provides that—

> "No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State, in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission, acting under and pursuant to the statutes of such State, shall be issued or granted by any Justice of the Supreme Court or by any District Court of the United States, or by any judge thereof, or by any Circuit Judge acting as District Judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a Justice of the Supreme Court of the United States, or to a Circuit or District Judge, and shall be heard and determined by three judges, of whom at least one shall be a Justice of the Supreme Court, or a Circuit Judge, and the other two may be either Circuit Judges or District Judges, and at least a majority of said three judges shall concur in granting such application."

Now, in this case it is apparent that in the application for injunction made in appellees' second supplemental bill, there is no attempt made to restrain the

enforcement, operation or execution of any statute of a State upon the ground of its unconstitutionality, or to restrain the enforcement or execution of any order made by an administrative board or commission acting under and pursuant to a statute upon the ground of the unconstitutionality of such statute. The allegations of the ancillary bill are that in the original case all of the issues sought to be raised in the subsequent case filed in the State Court are fully presented; that the jurisdiction of the District Court of the United States for the Western District of Texas had fully attached, and that, therefore, under the decisions, no other court had the right to determine the same issues. As stated in the opinion:

> "The subject-matter of the State suit is a part of that involved in this case. The jurisdiction of this court with reference thereto has been invoked by the parties plaintiff and defendant and by interveners; the jurisdiction has been exercised by this court in granting an injunction at the prayer of plaintiff, and refusing one asked by defendants, and by considering and determining an application for a continuance. The purpose of the three judges mentioned, as expressed in opinions filed, will be defeated by a trial in the State Court. Jurisdiction having been conferred by law, and having been invoked by all of the parties, and having been exercised by the court, its protection is a right and duty not limited by Section 266 (5) J. C."

It is evident that the constitutionality of no State statute is attacked, directly or indirectly, nor does the

court pass upon any such question. In so far, therefore, as the appellants seek to prosecute an appeal from the order granting the temporary injunction against the prosecution in the State Court, it is clear that no appeal lies to the Supreme Court of the United States. It may be contended, however, that they are entitled to an appeal to this court upon the denial of their prayers for affirmative relief. As to this, the court, in its opinion, said:

> "In his answer herein, the Attorney General of Texas asked that the rates complained of in the State Court be set aside as not required by the order of the Interstate Commerce Commission. This was before the three judges mentioned. Their judgment with reference thereto was not appealed from or otherwise attacked. But waiving all questions as to the legality or propriety of modifying their action, our conclusion is that the present status should be maintained until such time as this court may consider all of the grave questions of law and all the great mass of facts connected with this complicated and important litigation. The fact that the matters involved are again before the Interstate Commerce Commission, and that their action may affect the rates attacked, furnishes an additional reason for our conclusion. The relief asked by defendants is refused."

It is true that under the act of October 22, 1913, where suit has been brought to suspend or restrain the enforcement, operation or execution, in whole or in part, of an order made by the Interstate Commerce Commission, and hearing is had before the three

judges provided by that act upon application for temporary injunction, an appeal may be taken direct to the Supreme Court of the United States from an order granting or denying an interlocutory injunction, but it is specifically provided (Section 208, Judicial Code) that suits to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission shall be brought against the United States, and due notice thereof must be given to the Attorney General of the United States, as well as to the Interstate Commerce Commission. Even if the District Court of the United States for the Western District of Texas had any jurisdiction to set aside an order of the Interstate Commerce Commission, either in whole or in part, that jurisdiction was not invoked in this proceeding, for the reason that the United States Government was not made a party to this proceeding, had no notice thereof, and did not participate therein. The court below, therefore, had no jurisdiction to consider the attack upon the order of the Interstate Commerce Commission, and this court can acquire none. As a matter of fact, however, the record herein shows that the order of the Interstate Commission sought to be attacked was made by that body upon the petition of the Railroad Commission of Louisiana, whose residence is at Baton Rouge, in the Eastern District of that State, and that the District Court of the United States for that district is the only court which can entertain such attack. Illinois Cen-

tral R. R. Co. v. Public Utilities Commission of Illinois.

As stated in the opinion of the court, the affirmative prayers of appellants constitute in effect a motion to set aside or modify the injunction issued by the three judges on April 20, 1917. Certainly such a motion does not come within the purview either within Section 266 of the Judicial Code or of the act of October 22, 1913, permitting an appeal from an interlocutory order to the Supreme Court of the United States.

Wherefore, appellees pray that the appeal herein be dismissed for lack of jurisdiction.

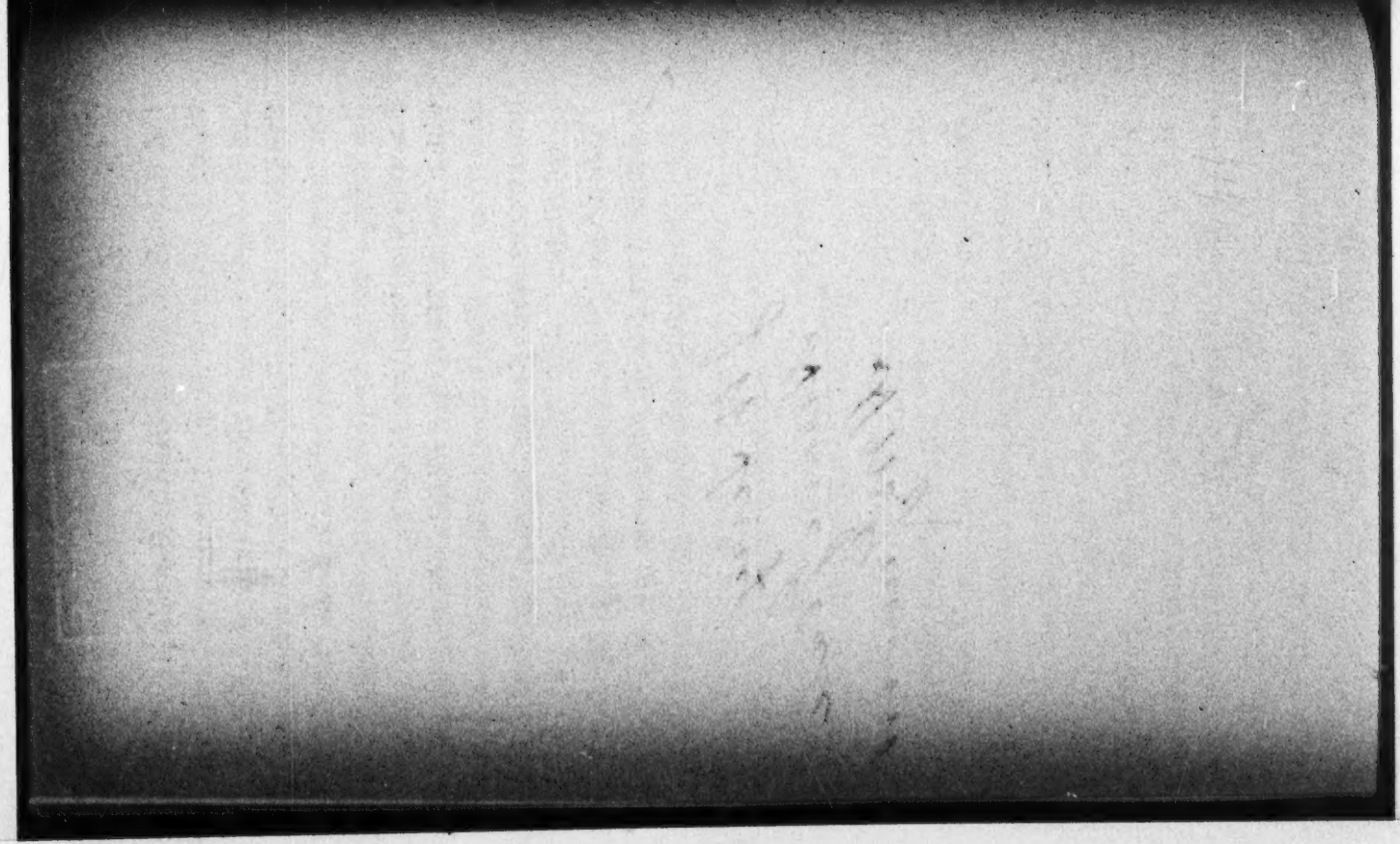
Respectfully submitted,

J. H. Terry

Hiram Glass

N. M. Garrard

Attorneys for Appellees.



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A217-118-75

No. 756.

In the Supreme Court of the United States

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL, OF THE STATE OF TEXAS, APPELLANTS,

VS.

EASTERN TEXAS RAILROAD COMPANY ET ALS., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

APPELLANTS' REPLY TO APPELLEES' BRIEF ON MOTION TO DISMISS.

STATEMENT OF THE CASE.

The following corrections and additions to the "statement of the case," as made in appellees' brief "on motion to dismiss," are submitted:

The original bill was filed by some of the appellees herein,—but not by all,—on the 4th day of September, 1916. (Record, pp. 111-112.) The Gulf, Texas & Western Railway Company, and some thirty others of the appellees (named on pages 221-222 of the Record) were not parties to the original bill or to the order issued by Judge Pardee, at Atlanta, Georgia, on September 2, 1916 (Record, pp. 111-138); they became parties to the Federal court litigation by intervention on October 31, 1916. (Record, pp. 221 et seq.) Nor did the original bill operate in their behalf.

After the filing of the original bill by some of the appellees, and before the intervention of the other appellees above men-

tioned, and on October 14, 1916, the appellant Looney, Attorney General, and appellant Nickels, Assistant Attorney General, in the name and in behalf of the State of Texas, as they were authorized and required by the statutes of the State, filed a suit in the Fifty-third District Court of Travis county, Texas (a State court) against the Gulf, Texas & Western, and each and all of the other appellees named on pages 221-222 of the record herein, seeking permanent and temporary injunction, etc., against them, and each of them, from charging rates, etc., on intrastate shipments in excess of those prescribed therefor by the Railroad Commission of Texas, it being alleged that such appellees proposed to and would charge such excessive rates. The petition in that case was presented to the district judge of that court, and it was ordered filed by him, and the application for temporary injunction was set for hearing for October 19, 1916, and notice thereof was ordered given such appellees, and was given them. On October 19, 1916, such appellees filed their answer in such cause, traversing the allegations of the State's petition, and alleging that that court had no jurisdiction over the subject matter because of the order of the Interstate Commerce Commission of July 7, 1916. The order of the Interstate Commerce Commission was not mentioned or referred to in the State's petition, it being bought into the case by such appellees by way of defense. On October 19, 1916, such appellees appeared for such hearing on the application for temporary injunction, and such hearing was begun and continued until October 23, 1916,—such hearing including much evidence introduced by all parties and argument thereon,—when an order was duly entered granting the temporary injunction as prayed for by the State. The proceedings in the State court in this case are described, in part (although incorrectly described as to the nature of the proof offered), on pages 234-235 of the Record, paragraph XXXV, of the plea of intervention of such appellees. An appeal was prosecuted from this order of the State court by such appellees, and the order, upon such appeal, was affirmed by the Court of Civil Appeals for the Third Supreme

Judicial District of Texas, and the case, with respect to the proceedings for temporary injunction, is now pending in the Supreme Court of the State upon application for writ or error filed by such appellees. The case, on its merits, is pending, undisposed of, in the district court of Travis county, Texas.

As to these particular appellees, the case mentioned in the State court includes the question of "Differential Rates" now involved here.

It will be borne in mind that this State court suit is entirely a separate and distinct suit from that described by appellees as cause No. 34,832, which latter cause was filed on July 20, 1917. (Record, p. 5.)

In the second supplemental bill,—upon which the present proceedings arose, and to which the appellees above mentioned are parties,—it is sought to enjoin the further prosecution of said State court suit filed on October 14, 1916, and all other proceedings, as well as cause No. 34,832. (See the prayer of said bill, Record, pp. 14-15.) And the order entered on September 20, 1917, from which this appeal is prosecuted, seeks to enjoin the further prosecution of said State court suit filed on October 14, 1916, as well as cause No. 34,832. (See the Order, Record, pp. 57-59.)

Appellant Nickels, sued herein as an officer of the State, and duly authorized by the statutes of the State to prosecute said suit filed on October 14, 1916, as well as said cause No. 34,832, was, for the time, made a party to the litigation in the Federal court by appellees' second supplemental bill filed on August 4, 1917. (See original bill, pp. 111-138; first supplemental bill, Record, pp. 244-249; plea in intervention, Record, pp. 221-238; second supplemental bill, Record, pp. 1-15.)

In this plea in intervention, filed on October 31, 1916, the appellees named therein sought an injunction against appellant Looney, restraining him from the further prosecution of said suit filed in the State court on October 14, 1916 (Record, p. 238), but this prayer was not granted in the New Orleans hearing

(Record, pp. 109-110), or at any other time up until the entry of the order from which this appeal is prosecuted.

The proposition is advanced by appellants that the order appealed from is erroneous and void, at least to the extent that it has the effect of restraining, or staying, the further prosecution of the State court suit filed on October 14, 1916, even though it may be held that in other respects the order is correct, because of Section 265, Judicial Code; and the prayer is made that the order, to this extent, at least, be reversed or modified.

Appellant Nickels was not a party to Equity 295, and was not made a party until the appellees' second supplemental bill was filed on August 4, 1917; he was not a party at the time of the granting of the restraining order by Judge Pardee on September 2, 1916, or at the time of the granting of the injunction by the three judges at New Orleans on April 20, 1917 (see original bill, Record, pp. 111-115; supplemental bill, Record, pp. 80-81; second supplemental bill, Record, pp. 2-15); nor was he named as a party in the order entered at New Orleans. (Record, pp. 109-110.) The allegation of the second supplemental bill, in which appellant Nickels is made a party for the first time, is that "the defendants B. F. Looney and Luther Nickels filed *in the name of the State of Texas*" the suit complained of, etc. (Record, p. 5.) Appellant Nickels is an officer of the State of Texas charged with the duty of enforcing the statutes of the State with respect to rates and rate regulations prescribed by State authority In paragraph I of appellants' answer to appellees' second supplemental bill, it is said:

"These defendants admit the allegation in said second supplemental bill contained to the effect that they are, respectively, Attorney General and Assistant Attorney General of Texas, and they say that as such officers of the State of Texas they were and are charged with the duty of enforcing the laws of the State of Texas and the orders of the Railroad Commission of Texas (the same being an administrative board and agency of said State, and that in the filing and prosecuting of said suit No. 34,832 in the dis-

trict court of Travis county, Texas, Fifty-third Judicial District, they, *as such officers,* thereunto duly authorized, were and are acting under and by virtue of, and were and are seking to enforce the statutes of the State of Texas and the orders of said administrative board pertaining to the subject matter of said suit. * * * The relief sought in plaintiffs' second supplemental bill of complaint is to suspend or restrain the enforcement, operation and execution of the statutes of Texas and the orders of the Railroad Commission of Texas by restraining the action of these defendants, "officers of such State," as aforesaid, and, therefore, these defendants suggest that it will be necessary to convene a bench of three judges, as provided for in Section 266 of the Judicial Code and in 38 Stat. at Large, 219, to pass upon the application for the injunction presented in said second supplemental bill of complaint and the motion herein presented, and pray that such action be taken and that said application be set for immediate hearing." (Record, pp. 37-38.)

The nature of appellants' answer was called to the attention of Judge Batts, and his especial attention was called to the foregoing allegation on August 9, 1917, and he thereupon postponed the hearing until September 20, 1917, and stated, by order, that he "will call to his assistance two other judges to sit in such hearing." (Record, p. 60.) The other two judges were called in, and on September 20, 1917, the hearing proceeded before them, and the order appealed from was entered and signed by all of them. (Record, pp. 57-59.) The petition for appeal herein was presented to the court as composed of said three judges and as so composed the appeal was allowed, all three judges signing the order therefor. (Record, pp. 570-571.)

The order entered at New Orleans April 20, 1917, did not, and did not purport to, adjudicate the right of the appellees to charge the rates published in their tariff, called Texas Lines Tariff 2-B, nor did it adjudicate the questions of the compliance of said tariff with the order of the Interstate Commerce Commission, and especially it did not deal at all with the question of

the right of the appellees to charge the "Differential Rates" involved in this proceeding.

The matters there considered and passed upon are clearly stated in the order itself. (Record, pp. 109-110), and the then defendants were simply prohibited from

"Instituting, or causing to be instituted suit or suits, civil or criminal, against plaintiffs (appellees here) * * * FOR THE RECOVERY OF ANY DAMAGES, OVERCHARGES, PENALTY, FINES, OR PENALTIES THEREUNDER * * * for failure of * * * (Appellees here) * * * to charge the rates or comply with the rules, orders and classifications of the Railroad Commission * * * WHEN SAID RATES, RULES, OR ORDERS AND CLASSIFICATIONS ARE IN CONFLICT WITH THE RATES AND CLASSIFICATIONS PRESCRIBED AND AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN SAID ORDER OF JULY 7, 1916." (Record, p. 110.)

If the rates involved in this particular proceeding are not "authorized" by said order of the Interstate Commerce Commission, the right of the carriers to charge them was not in any way adjudicated in the New Orleans order, nor can anything be found in such order to show that the order of the Interstate Commerce Commission purports to "authorize" them. Nor is there anything in said New Orleans order to indicate that the "Differential Rates," for distances of 351 more or less, prescribed by the Railroad Commission of Texas, are in conflict with the rates * * * prescribed and authorized by the Interstate Commerce Commission."

Taking the view that the "Differential Rates" prescribed by the Railroad Commission of Texas for distances of 351 miles or less do not, and cannot, "conflict with the rates * * * prescribed and authorized by the Interstate Commerce Commission," appellants filed the suit in the State court seeking, *by injunction alone* (no penalties, fines, damages or overcharges, etc., being sought), to compel the carriers to obey the orders of the Railroad

Commission of Texas with respect to "Differential Rates" for such distances. The order of the Interstate Commerce Commission, or Texas Lines Tariff 2-B, were not mentioned in the State court suit; the pleadings of appellants therein simply set forth the "Differential Rates" prescribed by the Railroad Commission of Texas for such distances, allege that they are the lawful rates, and an injunction was sought to prevent the charging of rates in excess thereof. (Record, pp. 15-37, 503-511.) The reasons why said rates are the lawful rates and why the same are not in conflict with the order of the Interstate Commerce Commission are fully set forth in appellants' brief upon the merits of the case, and it is not thought to be necessary to repeat such reasons here.

After the filing of the State court suit, as aforesaid, the appellees filed their "second supplemental bill of complaint" in the Federal court, making appellant Nickels a party defendant, and seeking to enjoin not only the prosecution of said State court suit but the filing and prosecution of any similar suit in any court other than the District Court of the United States for the Western District of Texas or the interference in any other way with the charging of all the rates contained in Texas Lines Tariff 2-B or supplements thereunto. (Record, pp. 14-15.) It may be stated here that Texas Lines Tariff 2-B publishes many intrastate rates on commodities not at all involved in the proceedings before the Interstate Commerce Commission. When this second supplemental bill was filed, the State district court had already exercised jurisdiction by ordering the petition filed by setting the application for temporary injunction for hearing, and by ordering notice thereof to be given the defendant carriers. (Record, p. 14.)

The whole theory of appellees' original bill and supplemental bills is that the relevant provisions of the Constitution and statutes of the State of Texas and the relevant orders of the Railroad Commission of Texas are unconstitutional and void because in alleged conflict with the Commerce Clause of the Federal Constitution and the Federal statutes enacted thereunder and the or-

ders of the Interstate Commerce Commission entered pursuant to the provisions of such Federal constitutional provision and Federal statutes. In the second supplemental bill, the original bill is referred to and made a part thereof. (Record, p. 2.) Paragraph II of the original bill reads, in part, as follows:

"This is a suit of a civil nature * * * and arises under the Constituton and laws of the United States; the acts complained of being void as hereinafter more fully pointed out, because in conflict with Subdivision 3, Section 8, Article I, of the Constitution of the United States, and the Act to Regulate Commerce pursuant thereto, and an order of the Interstate Commerce Commission made under the authority of said act." (Record, p. 115.)

The "acts complained of" in the original bill, as shown therein (Record, pp. 111-137), were the alleged threats of the defendants therein to enforce the State Constitution, statutes and orders of the Railroad Commission of Texas; the "acts complained of" in the second supplemental bill was an effort to enforce such State laws and regulations in the State court suit and any other proposed enforcement thereof. So far as the present case is concerned, it is not claimed that such State laws and regulations are void for any reason other than that they are in conflict with the Federal laws and regulations. If they are not in such conflict, there is no contention that they are not enforcible and that appellants are not by the State law, statute as well as constitutional, charged with the duty of enforcing them.

Section 22 of Article 4 of the Constitution of Texas, in part, provides:

"He (the Attorney General) shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and, from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from ex-

ercising any power, or demanding or collecting any species * * * toll, freight or wharfage not authorized by law."

Section 4, Article XII, of the Constitution of Texas, provides:

"The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney General * * * in the name and behalf of the State, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, * * * for the use of property devoted to the public, unless the same shall have been specially authorized by law."

Pursuant to these, and other, constitutional provisions the Legislature of Texas has passed laws making it the duty of the Attorney General and his Assistants to enforce the State's rates and rate regulations. Article 4428, Revised (Civil) Statutes of Texas, 1911, provides:

"He (the Attorney General) shall also especially inquire into the charter rights of all private corporations and, from time to time, in the name of the State, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or collecting any species of * * * freight * * * not authorized by law."

Article 6675, Revised (Civil) Statutes of Texas, 1911, provides, in part:

"And said Commission (Railroad Commission of Texas) shall report all * * * violations (of laws pertaining to railroads), with the facts in their possession, to the Attorney General * * * and request him to institute the proper proceedings."

Article 6398, Revised (Civil) Statutes, 1911, provides that the Attorney General may proceed by civil suit against railway corporations for the purpose of ousting them from the exercise of the power of charging "extortionate rates," and by Article 6669, R. S., 1911, rates are defined to be "extortionate" when in excess of those prescribed therefor by the Railroad Commission of Texas.

By Chapter 15, Title 115, Revised (Civil) Statutes, 1911, the Railroad Commission of Texas is given full power to classify

freight and to prescribe rates therefor, Article 6654 thereof reading as follows:

"The power and authority is hereby vested in the Railroad Commission of Texas, and it is hereby made its duty, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this State, etc."

The rates involved in the State court suit were prescribed by the Railroad Commission in virtue of its statutory powers aforesaid. There is no contention that such rates were not prescribed in accordance with the Texas statute, and if the statute is constitutional as applicable to the appellees with respect to the matters here involved the rate-orders are also constitutional; if the rate-orders are unconstitutional, they are so alone because the statute so applied is unconstitutional.

The statement on page 11 of Appellees' Brief, to the effect that "neither the government of the United States or the Interstate Commerce Commission was made a party defendant," is not true. In September, 1916, the Defendants, including Appellant Looney, filed their answer in Equity 295 (Record, pp. 194 to 221), making the Interstate Commerce Commission and the United States parties defendant, and on April 4, 1917, the United States filed therein its "Special Appearance and Motion." (Record, p. 566.) On September 6, 1917, copies of appellants' answer to appellees' second supplemental bill of complaint herein were sent to the Attorney General of the United States and to the Interstate Commerce Commission, together with copies of Judge Batts' order setting the matter for hearing for September 20, 1917. (Record, pp. 566-68.) In response to this notice, Hon. Albert L. Hopkins was present at said hearing as the legal representative of the Interstate Commerce Commission. It is true that in the copies of the answer sent to the Attorney General and the Interstate Commerce Commission the following clause in the concluding sentence of said answer was omitted by mistake (Record, pp.

566-567), towit: "That said order and such portions of same be set aside." However, said answer, beginning with Subdivision XII thereof (Record, pp. 45 to 54) contains specific allegations as to the invalidity of the order of the Interstate Commerce Commission and, after enumerating the reasons why it was claimed said order was void, paragraph "(9)" closes with the following language: "And the same (meaning the order of the Interstate Commerce Commission) should not be enforced or given effect, *but should be set aside in whole or in part.*" (Record, p. 54.)

The allegations as to venue upon which the United States and the Interstate Commerce Commission were made parties defendants read as follows, towit:

"This court, the defendants say, has jurisdiction and venue over the United States and the Interstate Commerce Commission, heretofore made parties defendant herein, and this court should retain jurisdiction and venue thereover, and such parties should be retained herein for the following reasons, towit:

"(I) By reason of all the premises hereinbefore alleged, and by reason of the fact that plaintiff's alleged cause of action is predicated, in large part, upon an order made by the Interstate Commerce Commission, which order is so general and indefinite as to require a construction thereof herein, if not a construction which will materially limit the same, the United States (and the Interstate Commerce Commission) are proper parties to this cause.

"(II) In the event the court should hold that the matters alleged herein by these defendants constitute such an attack upon the order of the Interstate Commerce Commission as is controlled by the terms of the Act of Congress, approved October 22, 1913, entitled 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen, and for other purposes,' then, in that event, the United States (and the Interstate Commerce Commission) are necessary parties.

"(III) Said act of Congress (above referred to) provides that

the venue 'of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein':

"(1) 'Is the residence of the party or any of the parties upon whose petition the order was made'; (2) 'Except that where the order * * * is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises'; (3) 'Except' (also) 'where the order does not relate * * * to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office.' Now, in this connection, these defendants say:

"(A) That since the plaintiffs' cause of action as alleged in this cause primarily, or at least to a large extent, is because of and depends alone upon the order of the Interstate Commerce Commission, and since all of said order or at least all of it except paragraphs XI and XII thereof, can lawfully be complied with by plaintiffs herein, if they so desire, without suspending or otherwise violating the Texas intrastate rates, rules and laws applicable, this suit was brought, and is being maintained, by plaintiffs to 'enforce' such order and the rights which plaintiffs claim flow therefrom, and, therefore, if under said act of Congress, this court hath no jurisdiction and venue over the United States (or the Interstate Commerce Commission) with respect to the matters pleaded by these defendants, then under said act it hath not jurisdiction or venue over these defendants, or the subject matter with respect to the matters alleged by plaintiffs herein, and in the event the court should hold that it has no jurisdiction or venue over the United States (or the Interstate Commerce Commission) with respect to the allegations made by these defendants then it has no jurisdiction or venue over these defendants or the subject matter of the bill of complaint, and prays, in that event, that the court dismiss the bill of complaint, and deny all other relief prayed by plaintiff.

"(B) These defendants say that said order of the Interstate Commerce Commission was, in large and material parts, made.

"(1) Upon the petition, application, or prayer of some or all of the plaintiffs herein, irrespective of the form or name of such petition, application, or prayer, the residence, or principal place of business, of which plaintiffs were and are within the Western District of Texas, and among such petitioning plaintiffs are: San Antonio & Aransas Pass Railway Company; A. R. Ponder, Receiver of the San Antonio, Uvalde & Gulf Refining Company, each of whose residence and principal places of business is within the Western District of Texas.

"In this connection, it is shown unto the court that if said order means what plaintiffs claim for it, and, if by reason of such order, plaintiffs are entitled to any relief herein, then, as shown by the bill of complaint, and as will be further shown upon the hearing hereof, said order operates to increase the revenues of the plaintiff many millions of dollars annually upon Texas intrastate traffic, of which increased revenues the plaintiffs whose residences are within the Western District of Texas have received, and will receive, substantial portions.

"It is shown further that some of the plaintiffs, including * * * The San Antonio & Aransas Pass Railway Company, voluntarily, made themselves parties * * * to the causes before the Interstate Commerce Commission, and substantially became petitioners therein.

"It is further shown that paragraphs XI and XII of said order were not made upon the petition of the Railroad Commission of Louisiana for said petitioner and did not pray that the carriers be required to desist from the use of the Texas classification or that they be required to use the 'current Western Classification in effect at the time such traffic moves,' but simply prayed that the carriers not be permitted to use classifications materially differing in their provisions for inter and intrastate traffic. These defendants, therefore, allege that paragraphs XI and XII of said order were made upon the petition, application or prayer of the

plaintiff,—or some of whose residences were within the Western District of Texas, irrespective of the form or name of such petition, application or prayer, or was made by the Commission upon its own motion and without a petition.

"It is also here shown to the court that the matters involved in said causes, and the various petitions therein and in said order, arose, in whole or in large part, in and throughout the Western District of Texas.

"As aforesaid, said order, in each and every material respect, as construed by plaintiffs in their bill herein, grants to plaintiffs, and each of them substantial relief, and defendants allege that each of such portions, in whole or part were made, directly or indirectly, upon the petition, regardless of the form or name thereof, of the plaintiffs, as will appear from the record, and as will be made more fully to appear from the record, and as will be made more fully to appear upon the hearing hereof, and in this connection defendants say that the plaintiffs are in possession of true copies of such pleadings as they, respectively, filed in said causes, and of letters, telegrams and other communications which were, in part, taken as pleadings, and they are hereby notified to produce upon the hearing hereof:

"(a) The originals or copies of all pleadings filed by them at any time in any of said causes; (b) the originals, or copies, of all correspondence, letters, telegrams, etc., passing between them, or any of them, or any of their officers, agents, or attorneys and the Interstate Commerce Commission, or any member, officer, agent or examiner thereof in any way pertaining to any of said causes; and (c) the originals, or true copies, of all correspondence, letters, telegrams, or other written communications or documents, passing between them, or any of them, and one George T. Atkins, Jr., since January 1, 1910.

"(2) Large and material portions of said order were not made upon the petition of any party to said causes,—unless upon the petitions of the carriers parties thereto, as above alleged,—and the matters in such portions involved, as well as the matters in such

petitions as were before the Commission arose, and now arise in and throughout the Western District of Texas.

"And in this connection, it is alleged, as before, that the principal offices and principal operating offices of many of the plaintiffs 'petitioners in court' herein, are located within the Western District of Texas, and also, that the principal office of those defendants, likewise 'petitioners in court' herein with respect to the matters and prayers set forth in this answer, is within the Western District of Texas.

"In this connection, also, it is shown that rates and classification provisions are dealt with, and attempted to be prescribed, in said order with respect to many articles and commodities of inter and intrastate traffic, which articles and commodities, rates and classification provisons were not involved in or complained of, in any petition before the Interstate Commerce Commission,—unless, as aforesaid, the same were involved in petitions, irrespective of form or name,—of some or all of the plaintiffs herein, including the plaintiffs whose residences are within the Western District of Texas, all of which will appear from the records of said causes before the Interstate Commerce Commission, and which will be made more fully to appear upon hearing hereof.

"(3) Large and material portions of said order were made upon petitions,—irrespective of form or name,—of various persons, chambers of commerce and other similar bodies, whose residences, or principal offices were and are within the Western District of Texas, as will more fully appear from the records in said causes and upon the hearing hereof.

"In this connection, it is shown that among others whose residences are within the 'Western District of Texas' were the following intervenors, complainants and petitioners in some or all of the causes consolidated for the purpose of making the order in question, towit: U. S. Pawkett, Jobbers and Manufacturers' League, Manufacturers' Club, and San Antonio Freight Bureau, whose residences and principal offices were and are at San Antonio, Bexar county, Texas; and Waco Chamber of Commerce,

whose residence and principal office was and is at Waco, McLennan county, Texas.

"It was upon the petition of such, and other such petitioners that the tariffs filed by plaintiffs and other carriers to become effective September 1, 1915, and other such tariffs to become effective October 15, 1915, were suspended, and it was upon the petition of such parties that Investigation and Suspension Docket No. 710 and Investigation and Suspension Docket No. 729, arose, which causes (Nos. 3913, 8290 and 8418) and all because one cause, and with respect to which consolidated cause the order here involved was issued, and specifically it was upon the petitions of such and other parties that paragraphs I and II of said order were made. Other portions of said order were made, in part at least, upon and in connection with the petitions of such parties.

"(C) Defendants say that the matters covered by the parts of the order made, in whole or part, upon the petitions of the various parties, and without any petition, as described in subparagraph '(B),' next above, are so inseparably mingled with and related to each other and to the whole of said order as to make it impossible for the court to consider the same separately and apart, and that, therefore, the whole of such order must be treated as having been made upon a petition of each and all of such parties.

"(IV) The matters alleged as defenses by these defendants are inseparably connected with the cause of action alleged by plaintiffs and with said order to such an extent as that this court under the general principles and usages of equity, and law, now has juridiction over the United States (and the Interstate Commerce Commission) as proper parties to this cause.

"(V) Wherefore, by reason of each and all of the things in this answer shown, these defendants pray that this court retain jurisdiction over the United States (and the Interstate Commerce Commission), and retain them as parties defendant herein." (Record, pp. 302 to 305.)

ARGUMENT.

The motion to dismiss seems to be predicated upon the theory that Section 266 of the Judicial Code only requires a hearing before three judges when the enforcement of a State statute is sought to be restrained because of unconstitutionality, or when an order of an administrative board is sought to be enjoined upon the ground that the statute under which the order was made is unconstitutional. The position of appellees is thus stated on pages 19-20 of their brief upon the motion:

"Now, in this case it is apparent that in the application for injunction made in appellees' second supplemental bill, there is no attempt made to restrain the enforcement, operation or execution of any statute of a State upon the ground of its unconstitutionality, *or to restrain the enforcement or execution of any order* made by an administrative board or commission acting under and pursuant to a statute *upon the ground of the unconstitutionality of such statute.*"

This position is inconsistent with the purposes of Congress as manifested in the amendment to Section 266 by the Act of March 4, 1913. In C., B. & Q. Ry. Co. vs. Oglesby, 198 Fed., 153, it had been held that an attack upon an order of an administrative board upon the ground of unconstitutionality did not come within the terms of Section 266 as it then existed. The amendment of March 4, 1913, was, evidently, made in view of the decision in the Oglesby case and in order to protect orders of administrative boards. (1st Foster's Federal Practice, p. 397, note 77.) The reason for the amendment, and the effect thereof, is clearly stated in Louisville & Nashville Ry. Co. vs. Railroad Commission, 208 Fed., 35, 37-39, wherein it is held that the amendment of March 4, 1913, extends the procedure requiring three judges to applications to enjoin any order made by a State board or commission which is alleged in the application to be in violation of the Federal Constitution, although the constitutionality of the statute under which the board or commission

acts may not be questioned. See, also, Seaboard Air Line vs. R. R. Comm., 213 Fed., 27. This, we submit, is the correct construction of Section 266 as it now exists. This, evidently, was the view of the district court, as enlarged, trying this case, for three judges were assembled and sat in the hearing and decided the case; the three-judge court also entertained the petition for appeal and allowed the same.

But even if this were not true, it still must be clear that the enforcement and execution of the statutes of the State are restrained by restraining the action of appellants thereunder. As pointed out already, in so far as this proceeding is concerned,—there is no claim that the resultant orders of the Railroad Commission of Texas are inherently unconstitutional; if they are unconstitutional, they are so because the statutes pertaining to their making and enforcement are themselves unconstitutional because in conflict with the Federal Constitution as enforced by the Act to Regulate Commerce and the orders of the Interstate Commerce Commission pursuant thereof. The statutes of the State command the Railroad Commission to make such orders as it has made and command the appellants to see to it that such orders are obeyed by taking the appropriate action in the courts. The orders having been made pursuant to the command, the suits whose prosecution is restrained were instituted by appellants in obedience to the command. It must be admitted that the orders sought to be enforced are in accord with the statute,—as stated, no attack herein is made upon them upon the ground that they go beyond the statute or that they are of themselves void if the statute itself, as applied, is constitutional. If the orders are void and nonenforcible it is only because the statute itself is such. So, it seems to us to be clear that, under any construction of Section 266, we have a case cognizable alone by a three-judge court.

And if so, then Section 266 itself expressly provides that an appeal may be taken directly to this court.

It is suggested, however, that if the appeal is improper upon the grounds alleged, the injunctive-order itself is void because of

having been participated in and entered by persons having no authority to do so. L. & N. Ry. Co. vs. R. R. Comm., 208 Fed., 35, 37-39. The order is not the act of the judge of the district court; it purports to be, and is, the joint act of three judges, one of whom was a justice of the Circuit Court of Appeals and another of whom was judge of another judicial district.

It is suggested in the brief for appellees that the pleading of these appellants constitutes simply a "motion to set aside or dissolve the injunction issued by the three judges on April 20, 1917." The extent of the action of the three judges at New Orleans is to be measured, we think, by the terms of the order there entered. We do not believe it was within the province of the three judges at New Orleans to hold in mental reservation, and make effective, an intention which they did not express in the order entered. Nor do we believe it to be within the power of another and different court, composed of different judges, five months later, to find and give authoritative expression of an undisclosed intention held by the three judges at New Orleans. The parties to the litigation, we think, were entitled to take the order to mean what it plainly says. And when its terms are examined, nothing therein can be found to prohibit the suit in the State court. As stated, that order simply enjoined the defendants from—

"instituting, or causing to be instituted, suit or suits, civil or criminal against * * * (Appellees here) * * * for the recovery of any damages, overcharges, penalty, fines, or penalties thereunder, * * * for failure of * * * (Appellees here) * * * to charge the rates or comply with the rules, orders and classifications of the Railroad Commission * * * WHEN said rates, rules, orders and classifications ARE IN CONFLICT with the rates and classifications prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916." (Record, pp. 109-110.)

If a rate prescribed by the Railroad Commission is not in "conflict" with the rates prescribed by the Interstate Commerce

Commission, clearly it was not enjoined by the New Orleans order. The basis of the State court suit was that the rates there sought to be enforced are not in conflict with any rates prescribed by the Interstate Commerce Commission. The question of whether or not they are in such conflict is not at all touched upon in the New Orleans order. The whole matter is without the purview of that order, and, being so, it is difficult to see any basis for the contention that appellants' pleadings constitute simply a motion to dissolve or modify. The subject matter of the pleading is dealt with by the court for the first time in the order appealed from.

But be this as it may, the relief asked in appellants' second supplemental bill is that the enforcement and execution of the statutes of the State, and the relevant orders of the Railroad Commission, made under such statutes, be restrained by restraining the action of these appellants, as officers of the State, thereunder. And this, we submit, presented a matter cognizable alone by the district court as enlarged under Section 266, from which an appeal lies to this court in virtue of the terms of that statute.

We submit, also, that the appeal is proper under 38 Stat. at Large, 219. The United States was made a party defendant long prior to the filing of the second supplemental bill. It had filed a special appearance contending that the court was without jurisdiction over it by reason of the terms of the venue statute. But the terms of the venue statute, we think, are fully met by the facts alleged, as shown in the statement of the case above, which allegations are amply supported by the record upon which the order of the Interstate Commerce Commission was made. And the motion of the United States at the time of the present order was, and still is, undisposed of. When the appellants' answer to the second supplemental bill was filed copies of it were sent to the Attorney General of the United States and to the Interstate Commerce Commission, together with copies of the order setting the matters for hearing. In response to this, a legal representative of the Interstate Commerce Commission was present and

really took part in the hearing. The point made because a part of the last sentence of the answer was by mistake of a stenographer left out of the copies sent to the Attorney General and the Interstate Commerce Commission is extremely technical; there was enough in the copies to put any reasonable, or ordinarily intelligent man, upon notice that an attack was to be made upon the order of the Interstate Commerce Commission and to disclose the exact nature of the attack. Under these circumstances, and since substantial parts of the order of the Interstate Commerce Commission, undoubtedly, were made upon the petition of parties residing within the Western District of Texas, and other substantial portions were made upon the Commission's own initiative, the subject matter of which portions arose in said district, the court as convened certainly had jurisdiction of the attack upon the Commission's order, and, when it refused all relief asked by these appellants, we submit that it entered an order from which an appeal lies directly to this court under 38 Stat. at Large, 219.

Wherefore, appellants respectfully submit that appellees' "Motion to Dismiss" the appeal should be in all things overruled.

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No. 756.

In the Supreme Court of the United States

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL, OF THE STATE OF TEXAS, APPELLANTS,

vs.

EASTERN TEXAS RAILROAD COMPANY ET AL., APPELLEES.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT OF THE CASE.

On October 30, 1915, the Railroad Commission of Louisiana filed with the Interstate Commerce Commission a complaint making the appellee railway companies and their receivers defendants (Record, pp. 385-390), alleging that "the rates now charged and collected for the transportation of all classes and commodities and to Shreveport (La.), to and from all points on the lines of respondents in the State of Texas are unjust and unreasonable—in violation of Section 1 of the Act to Regulate Commerce; that just and reasonable rates for application between Shreveport, Louisiana, and points on lines of defendants in Texas 'Common Point Territory,' as hereinafter described, would not exceed the scale of class rates prescribed by this Commission in its supplemental order, 34 I. C. C., 472, etc., etc."; and further alleging that "just and reasonable rates for application between Shreveport, Louisiana, and points on lines of defendants in Texas 'Differential Ter-

ritory,' as hereinafter described, would not exceed the scale prescribed by this Commission in its supplemental order, 34 I. C. C., 472, with the following differentals, *which shall not be available when the entire distance traversed is* 400 *miles or less.*" (Then follows the scale of differential rates, proposed.) (Record, p. 388, lines 24-32-35-41, p. 389.)

The "Differential Territory," as described in such complaint, is all territory west of the following described line:

"Texas Common Point Terrritoy will be understood as that part of the State of Texas on and east of a line drawn as follows:

"From the point where the St. Louis, San Francisco & Texas crosses the Red River, just north of Hazel, to Acme, on the Fort Worth & Denver City Railway; thence east and south of the Quanah, Acme & Pacific Railway via an air line to Sagerton, on the Stamford & Northwestern Railway; thence via an air line to Justiceburg, on the Panhandle & Santa Fe Railway; thence via an air line to Big Spring, on the Texas & Pacific; thence east of the Concho, San Saba & Llano Valley Railway, to San Angelo, on the Gulf, Colorado & Santa Fe Railway; thence via an air line to Menardville, on the Fort Worth & Rio Grande Railway; thence via an air line to Llano, on the Houston & Texas Central Railway; thence east of the San Antonio & Aransas Pass Railway and the San Antonio, Fredericksburg & Northern Railway, to San Antonio (including stations on the International & Great Northern Railway, to and including Devine); thence just west of the San Antonio & Aransas Pass Railway, via Skidmore and Sinton, to Corpus Chriti, on the Gulf of Mexico." (Record, p. 389.)

The distance between Shreveport, Louisiana, and any point on the above described line, via any route, is 400 miles or more. (Record, p. 40, lines 29-33; p. 511, lines 6-8.)

In other words, as will more fully appear hereinafter, under the order subsequently entered by the Interstate Commerce Commission, no "differential rates" can be charged upon a shipment between Shreveport, Louisiana, and any point in Texas "Differ-

ential Territory," unless the shipment moves a total distance of more than 400 miles. (Record, p. 40.)

The prayer of the said complaint of the Railroad Commission of Louisiana was as follows:

"Therefore, petitioners bring this petition before the Interstate Commerce Commission and pray that an answer be required from each of the defendants, and that after a full hearing and due investigation said Interstate Commerce Commisson will, by proper order, require the defendants to cease and desist from the aforesaid violations of the Act to Regulate Commerce, and will, by further order, prescribe on all the various classes and commodities (a more particular description of which commodities is contained in 'Appendix A' attached hereto) moving between Shreveport and points on the defendant lines, just and reasonable rates for the transportation thereof *between Shreveport and all stations on said respondents' lines in said Eastern Texas,* and require the establishment of non-discriminatory rates, rules and regulations for such transportation from or to Shreveport, to or from all Texas points, and also for the establishment of the same classification upon movements from or to Shreveport, to or from all points on the lines of the respondents in the State of Texas.

"Petitioners pray for such other and further orders as may be *mete* and proper in the premises and petitioners' cause may require." (Record, p. 390, lines 24-42.)

The Interrtate Commerce Commission in part, at least, upon such complaint, on July 7, 1916, entered its order (Record, pp. 183-194). The order down to and including paragraph numbered "III" deals with matters not involved in this proceeding (Record, p. 183); the paragraphs there numbered "IV" to "VIII" prescribed maxima "Common Point" and "Differential" *interstate* class and commodity rates (rates for application to *instratate* shipments not being mentioned in such paragraphs) (Record, pp. 183-193); paragraphs "XI" and "XII" thereof deal with the "Classification" (Record, p. 194), and are not here involved; paragraphs "IX"

and "X" of the order (which are the only provisions of the order referring to *intrastate* rates in any form) read as follows:

"IX. It is further ordered, that said defendants be, and they are hereby notified and required to cease and desist, on or before November 1, 1916, and thereafter to abstain from publishing, demanding, or collecting for the transportation of property between Shreveport and points in Texas any higher class rates on the following named commodities in carloads: Beef cattle, stock cattle, horses and mules, stone (rough), sand and gravel, common brick, fire brick, junk, lignite, cordwood and tan bark, machinery (gin and irrigation), glass fruit jars and bottles, iron and steel articles, potatoes and turnips, fruits, melons and vegetables, empty barrels and kegs, blackstrap molasses, cotton seed and products, unshelled peanuts, flour, wheat, corn, hay, agricultural implements, except hand implements, bagging and ties, binder twine, cans, canes and pails (tin), baskets, chocolate raw materials, dry goods, window glass, glassware (table), horse and mule shoes, oil (refined petroleum), iron and steel pipe, wrapping paper, printing paper, tin articles, wire and nails, door locks, tools, files and rasps, and on other commodities taking the same rates, respectively, as shown in said Appendix A, than are contemporaneously applied for the transportation of like property for like distances between Texas points, except in those instances in which the rates between Texas points have been depressed by reason of water competition along the Gulf of Mexico or waters contiguous thereto." (Record, p. 193.)

"X. It is further ordered, that said defendants be, and they are hereby notified and required to establish, on or before November 1, 1916, upon like notice, and thereafter to maintain and apply to the transportation or property between Shreveport, Louisiana, and points in the State of Texas, class rates and rates on the above-named commodities not in excess of those contemporaneously applied by them for the transportation of like property for like distances between points in the State of Texas, except in those instances in which the rates between Texas points have been de-

pressed by reason of water competition along the Gulf of Mexico or waters contiguous thereto." (Record, p. 193.)

The portion of the order dealing with "Class Rate Differentials" is contained in paragraph V (Record, p. 185), which first prescribes maxima class rates for interstate application between Shreveport and points in Texas, and then proceeds as follows:

"Class rates between Shreveport and points in differential territory in Texas may exceed the maximum rates above named by the following differentials in cents per 100 pounds, corresponding to the hauls in differential territory,"—

Then follows the scale of differential class rates. (Record, p. 185.)

Like provisions are made for differential rates on various commodities dealt with in the order. (Record, pp. 185-193.)

In the tariff prepared and filed by the appellee carriers, in purported compliance with this order, differential rates are stated for application, and since November 1, 1916, have been charged, and are now being charged, upon *intrastate* movements into, out of, or through "Differential Territory" regardless of the total length of the haul, with the result that on all shipments moving for distances of *less* than 400 miles total haul (where the shipment moves into, out of, or through "Differential Territory") *the intrastate rates are materially higher than the rates* charged on interstate shipments moving between Shreveport, Louisiana, and points in Texas; for instance: On a shipment moving from El Paso, Texas, to another point in the State for a distance of fifty miles, a rate of 42 cents per 100 pounds, first class, is charged, while on a shipment moving between Shreveport and a point in Texas for a distance of fifty miles, 37 cents per 100 pounds, first class, is charged; Acme, Texas, is a point on the differential line approximately 419 miles from Shreveport, and a shipment moving to Acme from Shreveport would require a joint line haul; on such a shipment a rate of approximately $1.14, first class, would apply (8 cents thereof being for joint line haul); Dalhart is approximately 220 miles west of Acme, and a shipment between the points would be

a single line haul, but under the construction given the order by plaintiffs a rate of approximately $1.10 would apply to such a shipment. Frances is a station on the line of the Fort Worth & Denver City Railway, approximately 279 miles south of Amarillo, Texas, and 278 miles west of Shreveport; a shipment between Amarillo and Frances would be a one-line haul; and between Shreveport and Frances it would be a joint line haul; under the construction given the order by the plaintiffs a rate of $1.00, first class, would apply to the Shreveport joint line shipment, while a rate of $1.14 would apply to the single line shipment from Amarillo. Big Spring, Texas, is a point on the line of the Texas & Pacific Railway, about 488 miles west of Shreveport and 346 miles east of El Paso; if an El Paso merchant and a Shreveport merchant competed for the trade at Big Spring the Shreveport merchant would get his goods hauled to Big Spring for $1.06 per 100 pounds, first class, while his El Paso competitor, under the construction given the order by plaintiffs, would have to pay $1.33 per 100 pounds. Sweetwater, Texas, is a station on the line of the Texas & Pacific Railway approximately 423 miles west of Shreveport and 412 miles east of El Paso, Texas; if a Shreveport merchant and an El Paso merchant should compete for the trade at Sweetwater, the Shreveport man would have his goods hauled to Sweetwater at a rate of $1.06 per 100 pounds, first class, while the El Paso merchant would have to pay $1.36 per 100 pounds. (Record, pp. 41-42.)

Appellants, in their pleadings, evidence and argument, below, took the position that, since the only part of the order of the Interstate Commerce Commission which refers to *intrastate* rates simply undertake to require the carriers to charge rates for the "transportation of property between Shreveport, Louisiana, and points in the State of Texas" "not *in excess* of those contemporaneously applied by them for the transportation of like property *for like distances between* points in the State of Texas," there is no warrant in the order for the charging of *higher rates* intrastate than are contemporaneously charged interstate, and that the con-

duct of the carriers in doing so is not required or authorized (even if the validity of the order is conceded) but that such conduct is really in violation of the terms of the order.

The location of the "Differential Line," as prescribed by the Railroad Commission of Texas, is the same as that described in the aforesaid complaint of the Railroad Commission of Louisiana (which is also described in the same manner by the Interstate Commerce Commission in its report accompanying the aforesaid order) except in certain particulars, but for the purpose of this case, and in the State court case, the location of the line is accepted as described by the Interstate Commerce Commission.

As aforesaid, the appellee carriers prepared and filed a tariff,—known as "Texas Lines Tariff 2-B,"—purporting to establish both State and interstate rates on classes, and the various commodities dealt with in said order, which State and interstate common-point territory rates were substantially equal to the maxima rates prescribed in said order for interstate application (Record, pp. 184, 510); and this tariff, as aforesaid, prescribed "Differential Rates," on both classes and such commodities, for application to movements between Shreveport and points in "Differential Territory" and for application to all shipments moving within the State for all distances moving within "Differential Territory" regardless of the total length of the haul. (Record, pp. 7-8.) This tariff became effective November 1, 1916, and is now in force, and since November 1, 1916, the carriers have charged such rates on all such State shipments, and propose to continue to do so. (Record, p. 510.)

On September 4, 1916, before the tariff mentioned went into effect, a number of the appellee carriers,—representing, so they claim, about 80 per cent of the mileage in Texas,—filed their bill of complaint in the District Court of the United States for the Western District of Texas, at Austin (Record, p. 111), setting up the aforesaid order and report of the Interstate Commerce Commission, the aforesaid tariff (which they alleged was prepared and filed in accordance with said order), alleging that the Railroad

Commission of Texas, and its members, the Attorney General of Texas, and shippers, were threatening to institute prosecutions against them for disregarding the rates and rate regulations established under the laws of the State for intrastate application, and praying for a temporary and a perpetual injunction, and a temporary restraining order, restraining the defendants there named from instituting such prosecutions. (Record, pp. 111-137.) Upon a statement that the judge of said district court was absent from the district and was unable to act, the prayer for temporary restraining order and injunction was presented to Hon. Don A. Pardee, United States circuit judge, at Atlanta, Georgia, on the 2d day of September, 1916, and on said date said judge entered an order restraining the defendants named from prosecuting such suits, and setting the application for temporary injunction for hearing before three judges at Atlanta, Georgia, for the 28th day of September, 1916, and calling together two other judges for the purpose of hearing the same. (Record, pp. 137-138.) Notice of this hearing was given, but the matter was postponed from time to time, until it finally came on at New Orleans, Louisiana, on April 16, 1917, before a court composed of Hon. Don A. Pardee, Hon. R. L. Batts, and Hon. R. W. Walker, United States circuit judges (Record, p. 64), and the hearing continued until April 21, 1917, when an order was entered as follows:

"This cause came on to be heard on motion for a temporary injunction in the above entitled causes on the 4th day of April, 1917, before the undersigned, Don A. Pardee, circuit judge, in chambers at New Orleans, and the Hons. R. W. Walker and R. L. Batts, circuit judges, called to assist under Section 266 of the Judicial Code, and evidence introduced, and was argued.

"Whereupon, on consideration of the law and the evidence, and the order of the Interstate Commerce Commission of July 7, 1916, and for the reasons filed herewith, it is ordered that a temporary injunction issue as prayed for, enjoining and restraining during the pendency of these actions or until further order by the court, the defendants and each of them, and all other officers, individuals,

persons and corporations, and his, their, or its attorneys, agents, or employes, from claiming or instituting, or causing to be instituted suit or suits, civil or criminal, against plaintiffs and intervenors, or either or any of them, or their or its officers or agents, for the recovery of any damages, overcharges, penalty, fines, or penalties thereunder, by virtue of Chapter 15, Title 115, of the Revised Civil Statutes of the State of Texas, or any other statute thereof, for failure of plaintiffs or intervenors, or either of them, to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said order of July 7, 1916, or for the charging by plaintiffs, or any or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916, and further to restrain the said Railroad Commission of Texas, and said Allison Mayfield, Charles H. Hurdleston, and Earle B. Mayfield, and their successors in office, from furnishing to any person or persons, copies, certified or otherwise, of any of said tariffs of rates, circulars, schedules, rules, order and classifications, or of the orders establishing the same, of the Railroad Commission of Texas, against which relief is herein prayed for, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that plaintiffs and intervenors, or either or any of them, their or its officers and agents have not observed, and do not observe and obey said tariffs of rates, circulars, schedules, orders and classifications of the Railroad Commission of Texas herein complained of, where the same are in conflict with the rates and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916, and from requesting or authorizing the Attorney General or any other officer of the State

of Texas to institute any proceedings against plaintiffs or intervenors, or either or any of them, their or its officers and agents, for failure to obey or for disregarding said tariffs of rates, circulars, schedules, rules, orders and classifications of said Railroad Commission of Texas.

"Witness our hands, in the City of New Orleans, this 20th day of April, A. D. 1017." (Record, pp. 109-110.)

In the meantime, on October 31, 1916, the other appellee carriers intervened in said suit (Record, pp. 221-238), making like allegations and prayers as made by the original complainants, and their intervention was heard with the bill of the original complainants in the proceedings at New Orleans, above referred to. (Record, p. 69.)

The appellants in the present proceedings took the view that the order of the Interstate Commerce Commission, referred to above, did not authorize, or purport to authorize, the appellee carriers to charge the "Differential Rates" contained in said "Texas Lines Tariff 2-B" on *intrastate* shipments moving for distances of less than 400 miles, and because such tariff in this respect clearly created unjust discrimination against intrastate commerce (Record, pp. 41-43, paragraphs IV and V), and because the order entered by the three judges at New Orleans (above copied) only prohibited the defendants therein from "instituting, or causing to be instituted suit or suits, civil or criminal, against plaintiffs and intervenors, or either or any of them, or their or its officers or agents, *for the recovery of any damages, overcharges, penalty, fines, or penalties thereunder*, by virtue of Chapter 15, Title 115, of the Revised Civil Statutes of the State of Texas, or any other statute thereof, for failure of plaintiffs or intervenors, or either of them, to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, *when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said orders of July 7, 1916.*

or for the charging by plaintiffs, or any or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916,"— they (present appellants), in the name and in behalf of the *State of Texas*, on the 20th day of July, 1917 (Record, p. 5), filed in the (State) district court of Travis county, Texas, Fifty-third Judicial District, a suit against the appellees, a copy of the original petition therein being set forth on pages 15-37 of the record herein. Later an amended petition was filed in said State court suit. (Record, pp. 502-4.) In this (State court) suit there was no prayer for judgment for penalties, fines, damages, or overcharges (such as was prohibited by the order of the three judges referred to) but the prayer for relief was for temporary and permanent injunction restraining the appellees from further charging "Differential Rates" on intrastate shipments moving for 351 miles or less in excess of those prescribed therefor, and under the conditions prescribed therefor, by the Railroad Commission of Texas, the "Differential Rates" so prescribed, and the conditions for their application so prescribed, being correctly shown (Record, p. 510, lines 40-44, and p. 511, lines 1-5) in Exhibits 4 and 5 attached to said petition in the State court, said exhibits being set forth in the record herein on pages 505-510. In said petition in the State court no complaint was made of the "base rates" contained in "Texas Lines Tariff 2-B," nor was any complaint made of the location of the "Differential Lines," as described in said Tariff (Record, pp. 15-37, 503-510), nor was the order of the Interstate Commerce Commission of July 7, 1916, referred to, the injunction sought being merely to restrain the appellees from charging "Differential Rates" on intrastate shipments moving for distances of 351 miles or less in excess of those prescribed therefor by State authority.

Under "Texas Lines Tariff 2-B," referred to above, the class "Differential Rates" applied begin with distances of 20 miles and less, as follows (the top line figures and letters indicating the

classes, and the second line figures indicating the rates in cents per 100 pounds):

1	2	3	4	5	A	B	C	D	E
2	2	1	1	1	1	1	1	1	1

and reach a maximum at 300 miles, as follows:

1	2	3	4	5	A	B	C	D	E
30	25	23	21	15	16	13	12	11	10

(Record, p. 185.)

The class "Differential Rates" prescribed by the Railroad Commission of Texas for intrastate application begin with distances of 20 miles and less, as follows:

1	2	3	4	5	A	B	C	D	E
2	2	1	1	1	1	1	1	1	1

and reach a maximum at 245 miles, as follows:

1	2	3	4	5	A	B	C	D	E
23	22	20	19	13	14	12	11	10	9

(Record, p. 505.)

The "Differential Rates" as contained in said tariff for practically all intermediate distances being higher than those prescribed therefor by the Railroad Commission of Texas. (Record, pp. 185, 505.) There are certain minor exceptions made in the volume and conditions of application of the "Differential Rates" prescribed by the Railroad Commission for certain roads and localities. (Record, pp. 506-507.) Under the orders of the Railroad Commission of Texas the class "Differential Rates" may not be charged unless the shipment moves for more than 245 miles (total haul) (Record, p. 505, lines 6-7), while, as pointed out, under "Texas Lines Tariff 2-B," class "Differential Rates" are applied for all distances intrastate in "Differential Territory," regardless of the total length of the haul, while on interstate shipments they are only applied when the shipment moves a total distance of more than 400 miles (Record, pp. 41-42, 511), with the result that on all intrastate shipments, moving for any distance in "Differential

Territory," where the total haul is less than 400 miles a higher total rate is charged than is charged on interstate shipments moving for like distances. Like applications of "Differential Rates," and differences in volume and application thereof, are made by "Texas Lines Tariff 2-B" and by the order of the Railroad Commission of Texas with respect to the various commodities on which interstate differentials are stated by the order of the Interstate Commerce Commission referred to. (Record, pp. 186-192, 507-510) with like results.

The application for temporary injunction in said State court suit was by the court set for hearing for the 6th day of August, 1917 (Record, p. 14), and notice thereof duly given to defendants therein. In the meantime, on the 4th day of August, 1917, the defendants therein (appellees here) filed their second supplemental bill of complaint, in equity No. 295, in the District Court of the United States for the Western District of Texas (Record, p. 1), being the original cause filed, as aforesaid, on September 4, 1916. The appellants herein were named as defendants in said second supplemental bill of complaint (Record, p. 2), the appellant Nickels not having been made a party theretofore. Said second supplemental bill of complaint purported to recite the history of said original cause and the proceeding therein, as well as the history of said order of the Interstate Commerce Commission of July 7, 1916, and of said "Texas Lines Tariff 2-B," and of said State court suit, and averred that the "Differential Rates" and the application therefore set forth in said "Texas Lines Tariff 2-B," were authorized by said order of the Interstate Commerce Commission, and that the effect of said State court suit would be to interfere with appellees' compliance with said order of the Interstate Commerce Commission, and that said State court was without jurisdiction of the subject matter, and prayed that a restraining order be at once granted restraining the said defendants, Looney and Nickels, their associates, and all other persons, from prosecuting the said suit No. 31839 in the said district court of Travis county, Texas, and from instituting or prosecuting any

similar suit in said court or any other court other than the United States District Court for the Western District of Texas, and from in any way or manner whatsoever attempting to interfere or prevent these plaintiffs from charging the rates described in said "Texas Lines Tariff 2-B," and supplements thereto, and that upon hearing an injunction be granted restraining the said defendants and all other persons, as prayed for above, and that on final hearing such injunction be made perpetual, etc. (Record, pp. 1-15.)

Said second supplemental bill of complaint was presented to Hon. R. La Batts, United States Circuit Judge at Austin, in Chambers, on August 4, 1917, and the same was ordered filed and set for hearing as to the prayer for temporary injunction for August 9, 1917, it appearing that Hon. Duval West, District Judge for said District, was disqualified, and that Hon. W. R. Smith, also District Judge for said District, was absent from the district and the State. (Record, p. 59.)

The appellants duly filed their answer to said second supplemental bill of complaint on August 9, 1917, and, among other things, averred that in said State suit they were acting as officers of the State of Texas, charged with the duty of enforcing the laws of the State and the orders of the Railroad Commission of Texas (the same being an administrative board and agency of the State) and therein they were acting under and were seeking to enforce the statutes of the State and the orders of said administrative board, and that the relief sought by plaintiffs' second supplemental bill of complaint would have the effect of suspending or restraining the action of appellants thereunder, and suggested to said judge the necessity for the convention of a bench of three judges, as provided for in Section 266 of the Judicial Code, and in 38 Stat. at Large, 219, to pass upon the application for injunction presented in said second supplemental bill of complaint and the matters involved in appellants' answer thereunto. (Record, pp. 37-38.) The character of the answer and the foregoing portion thereof was called to the attention of said judge on August 9, 1917, and thereupon said judge postponed the hearing and reset the

same for the 20th day of September, 1917, stating that he would call to his assistance two other judges to sit in the hearing, the appellants at the same time agreeing to postpone any action in said State court suit pending such hearing. (Record, p. 60.)

In their answer to said second supplemental bill of complaint appellants also alleged that the matters involved in said State court suit were not involved in the prior proceedings in equity No. 295, "and that the action taken by them, and the relief sought in said cause No. 34,832 were, and are, in no way prohibited or enjoined by any order heretofore entered in this court in said equity No. 295." (Record, p. 38.) They also alleged and elaborated the matters hereinbefore set forth with respect to the nature and effect of the order of the Interstate Commerce Commission of date July 7, 1916, and the nature and effect of said "Texas Lines Tariff 2-B," with respect to differential rates made applicable to intrastate shipments of 351 miles or less, and alleged that such portions of said tariff were not authorized, or purportedly authorized, or impliedly authorized, by said order of the Interstate Commerce Commission. (Record, pp. 39-43, paragraphs 3, 4 and 5.) In the alternative, they alleged that if such order did authorize, or purport to authorize, the charging of differential rates, as provided for in said "Texas Lines Tariff 2-B," for intrastate shipments moving for 351 miles, or less, that the same, to such extent, was void, and afforded appellees no ground for the relief claimed. (Record, pp. 45-54.)

Appellants also alleged that the appellees were not entitled to the relief prayed for in their said second supplemental bill of complaint for the reason that paragraphs XI and X of the order of the Interstate Commerce Commission of date July 7, 1916 (copied above) plead by appellees, as a basis for such relief, are void in whole and in part, for each and all of the following reasons, towit:

"(1) Said portions of the order, by its own terms, as construed by the carriers, apply to intrastate shipments throughout the State

of Texas, and as construed violates the following portion of Section 1 of the Act to Regulate Commerce, towit:

"'Provided, however, that the provisions of this act shall not apply to the transportation of * * * property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped from or to a foreign country from or to any State or Territory aforesaid.'

"(2) Said portions of said order are too indefinite as to the point or territory to which it might lawfully apply to be enforcible, and the same does not in any way define the territory commercially tributary to Shreveport, Louisiana, or the territory or points in Texas in or with respect to which there is competition between Shreveport, Louisiana, and any Texas points, or in or with respect to which there was, is, or can be, any discrimination against Shreveport, Louisiana, by reason of the relation of State and interstate rates.

"(3) Said order, as so construed, undertakes to prescribe interstate rates applicable between Shreveport, Louisiana, and points in Texas from all distances from one mile to twenty miles, and to make the same the measure of what plaintiffs call the 'standard rates' between points within the State of Texas for such distances, although the shortest distance between Shreveport, Louisiana, and any Texas point by the line of railway is more than 20 miles, and although the distance between Shreveport, Louisiana, and the nearest point on the Texas-Louisiana State line by the line of any railway is 20 miles or more, and although there can not possibly be an interstate shipment between Shreveport, Louisiana, and any Texas point, which does not, necessarily, move more than 20 miles. Said portions of the order can not, therefore, be properly construed as applicable to shipments moving between points in Texas for distances of 20 miles or less, and if so construed, or applicable, the same is void in whole, or at least to such extent.

"(4) The report of the Interstate Commerce Commission accompanying said order, on pages 120 and 121 thereof, affirmatively shows that a material, if not the sole, reason leading the Com-

mission to undertake to make paragraphs IX and X of the order apply to shipments between points in Texas west of 'Eastern Texas' (as defined in 34 I. C. C., 472), if in fact it did undertake to make said order so apply, was an effort to prevent supposed discrimination as between localities and cities in Texas with respect to rates applicable on movements in intrastate commerce, and that the Commission did not make its order so apply, if it intended for it to so apply, to prevent unlawful discrimination against interstate traffic.

"Defendants say that the Interstate Commerce Commission had no power to make an order in whole or part for the purpose of preventing discrimination as between movements wholly in intrastate commerce and thereby to affect State-made rates and regulations applicable to such intrastate movements, and because the Commission did make paragraphs IX and X of the order, and other portions thereof, so applicable for the reasons shown on pages 120 and 121 of its report it exceeded its jurisdiction and committed an error of law which renders said order void in whole or at least renders such portions of the order void as applicable to territory west of said territory defined as 'Eastern Texas,' and said order, therefore, affords no justification for the relief prayed for by plaintiffs in their second supplemental bill of complaint.

"In this connection it is shown upon the court that said order as aforesaid was made upon the complaint of the Railroad Commission of Louisiana in behalf of Shreveport, Louisiana, and that the complainant did not pray for the extension of said order, or the previous orders, to shipments moving between points in Texas wholly west of said 'Eastern Texas.' The prayer of said complaint is set forth on pages 12 and 13 thereof, a true copy of which complaint certified as correct by the secretary of the Interstate Commerce Commission is now on file with the papers in this cause and reference thereto is here made. In said prayer the complainant requested relief as follows: 'That after a full hearing and due investigation said Interstate Commerce Commission will, by aforesaid violations of the Act to Regulate Commerce, and will,

by further order, prescribe on all the various classes and commodities * * * moving between Shreveport and points on the defendant lines just and reasonable rates for the transportation thereof between said Shreveport and all stations on respondents' lines in said Eastern Texas, and require the establishment of non-discriminatory rates, rules and regulations for such transportation from or to Shreveport (Note: i. e., from "said Eastern Texas" to Shreveport, or from Shreveport to "said Eastern Texas") "to or from all Texas points" (note: i. e., "to * * * all Texas points" from "said Eastern Texas," "or from all Texas points" to "said Eastern Texas"). Defendants say that the term "the aforesaid violations of the Act to Regulate Commerce," as used in the above quoted prayer refer to the allegations contained in paragraph IV, page 8, of said complaint wherein it is said that the rates charged and collected on shipments between Shreveport and Texas points are "unjust and unreasonable in violation of Section 1 of the Act to Regulate Commerce" and to the allegation of unjust discrimination with respect to traffic to and from and within "said Eastern Texas," and does not refer to shipments between points in Texas moving wholly west of said "Eastern Texas."'

"Defendants further say, that the Railroad Commission of Louisiana, in behalf of Shreveport, Louisiana, or in any other way, had no authority to, and did not make any complaint of discrimination in behalf of Texas localities, but if it be held to have done so it had no authority to do so and such complaint on behalf of such Texas localities gave the Interstate Commerce Commission no jurisdiction to remove or prevent discrimination as between Texas localities.

"(5) It affirmatively appears from the report of the Interstate Commerce Commission accompanying said order,—and on page 91 thereof,—that one of the material reasons, if not the sole reason, leading the Commission to prescribe and authorize,—if it did so,—rates and regulations as applicable to intrastate shipments in excess of those therefor prescribed by the Railroad Commission of Texas, and especially such differential rates, was the supposed

inadequacy of such State made rates to afford the carriers a reasonable return upon their investment with respect to their intrastate traffic. Defendants say that the Interstate Commerce Commission had no authority to inquire into or pass upon the reasonableness of such intrastate rates, and because it did so, and because thereof it undertook to make paragraphs 'IX,' 'X' and 'XII,' thereof applicable to practically all shipments between points within the State of Texas, it committed such an error of law as to render said order, or such portion of said order, void as so applicable, and the same affords plaintiffs no basis for the relief prayed in their second supplemental bill of complaint.

"That the Interstate Commerce Commission considered what rates would be reasonable as applicable to intrastate shipments, and did not confine itself to the questions of the reasonableness of the interstate rates involved and the prevention of discrimination agaist interstate commerce is shown by the discussion of the order here involved, and other cases of a general similar character, contained in its thirteenth annual report (1916) and especially on page 90 of said report, wherein it is said:

"'The situation requiring adjustment presents two rates, one State and the other interstate, the one higher or lower than the other, applicable on the same commodity for transportation by the same carrier under substantially similar circumstances and conditions. Assuming both of these rates which give rise to the controversy to lie within the zone of reasonableness, an assumption which is not always warranted by the facts, the difference between them creates the unjust discrimination and the undue preference of advantage which we are called upon to remove. The single point within the zone of reasonableness which presents the reasonable rate, is, therefore, the point to be sought.'

"These defendants say that the Interstate Commerce Commission only has authority to fix maximum *interest* rates; that it has authority to fix "the rates," or the absolute rate, even for interstate application; that it had no authority at all to fix any rate for intrastate application; but that the above quoted statement of

principle shows that it assumed such power over intrastate rates and that such assumption had a material effect upon its decision to make the order in the terms in which it was made.

"In this connection, also, it is shown that the plaintiffs proposed a scale of rates for intrastate application for adoption by the Interstate Commerce Commission, and this scale as so proposed was substantially adopted by said Commission for such application, at least through indirection and through the proposed operation of paragraphs 'IX' and 'X' of the order. This is shown in part by the following: On pages 93 et seq. of the report it is recited that the plaintiffs had filed and presented an application to the Railroad Commission of Texas for increased intrastate rates, supported by certain evidence with respect to station costs in Texas, etc.; on page 94 of the report it is said: 'While all the evidence with reference to station costs was presented to the Texas Commission, the carriers did not at that time propose a definite scale of rates based upon these figures. This scale was proposed at the hearing before us in December, 1915, and met with considerable objection and criticism from some of the protestants, who asserted that the computations concerning these station costs were erroneous in certain particulars. It does not appear, however, that the errors pointed out in the computations lead to any serious errors in the results.

" 'While we are not disposed to accept the claims of the carriers with reference to these station costs, for the reason, among others, that the computations made as to the freight stations examined may not represent the average station costs throughout the State of Texas, due consideration must be given to the data submitted. They are strongly indicative that the scale of rates known as the Shreveport scale (*Note*: i. e., the scale in 34 I. C. C., 473) is too low for short hauls in the territory to which it is intended to apply.' It affirmatively appears from the report that the evidence referred to in the excerpt quoted has no reference to station costs at Shreveport. On page 85 of the thirtieth annual report of the Interstate Commerce Commission reference is made to the

use of this evidence in the making of the order of July 7, 1916, as to class rates, and it is there said that the 'modifications (Note: i. e., in the scale in 34 I. C. C., 472) so made (Note: i. e., by the order of July 7, 1916) were principally with regard to rates for short distances and were largely due to the showing made respecting terminal expenses, as set forth in the report.' Now the scale prescribed in 34 I. C. C., 472, contained class rates for distances of 20 miles and less, as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates:										
(10 miles and less)	13	12	10	8	6	7	6	5	5	4
(12 and over 10)	14	12	11	9	6	7	6	5	5	4
(15 and over 12)	15	13	12	10	7	8	6	5	5	4
(18 and over 15)	16	14	12	10	8	9	7	6	5	4
(21 and over 18)	17	15	13	11	9	10	8	6	6	5

"On page 93 of the report it is said: 'The carriers propose that the Shreveport scale (just mentioned) be modified by making the minimum rates which would be applicable for distances of 10 miles or less as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates:										
(10 miles and less)	23	19	16	14	10	10	8	7	6	5
(20 and over 10)	27	22	19	16	12	13	10	9	8	6'

"As already shown, on account of geographical location, none of the above mentioned short distance rates could, under any circumstances, be applied on any shipment between Shreveport, Louisiana, and any point in Texas. Nor did any party to the proceedings, except the plaintiffs, complain that the rates prescribed in 34 I. C. C., 472, were too low.

"On page 99 of the report, the Interstate Commerce Commission said:

" 'The rates proposed by the carriers for application in Texas and between Shhreveport and Texas points correspond closely with the rates on cotton seed hulls from Oklahoma points to points in

Texas, discussed in "Cotton Seed to Texas, 25 I. C. C., 237." The rates on this commodity attempted to be authorized by the order of July 7, 1916, correspond very closely, if not identically, with those proposed by the carriers for 'application in Texas.'

"It is further shown that the Missouri, Kansas & Texas Railway Company, and its receiver, filed an answer in cause No. 8418 (a true copy of which answer is now on file in this court with the papers in equity No. 295, certified as being a true copy by the secretary of the Interstate Commerce Commission, and to which reference is here made) and therein alleged that the intrastate rates were 'unjustly and unreasonably low,' etc., and prayed that said Commission make an order of such nature as to permit them to increase their rates 'between points in Texas.' Other of the plaintiff carriers filed substantially like answers.

"And as shown by the report, and especially by the portions referred to above, the Interstate Commerce Commission in substance granted these formal, as well as the informal, prayers of the carriers for increased intrastate rates.

"It is further shown that the report and order affirmatively shows that in very many substantial particulars and instances rates were attempted to be authorized which were materially higher than the interstate rates complained of as being already too high by the Railroad Commission of Louisiana.

"For the foregoing and other reasons said order, and said portions thereof, are especially void as applicable to intrastate shipments between points on the lines of the Fort Worth & Denver City Railway Company, plaintiff herein, and all relief prayed in behalf of such company should be denied even in the event relief should be granted to some or all of the other plaintiffs herein. And in this connection defendants show unto the court the following:

"The Interstate Commerce Commission, on pages 173 and 174 of its said report, made the following findings of fact with respect to the 'condition' of the Fort Worth & Denver City Railway Company, to-wit:

"Its lines 'lie very largely in differential territory and on that account enjoys higher rates than the roads in Eastern Texas.'

"Although the net income before deducting interest during the years 1910 to 1915 has been diminishing, it has been sufficient in each year to meet all interest obligations and to permit a reasonable return upon the valuation of the property made by the road's engineers. We are not informed as to the thoroughness of this valuation or of that made by the Texas Commission, but for the last six years this road has been able to earn approximately 7 per cent annually upon its capitalization; although the net revenues of this road appear to have been decreasing for six years there is nothing in its present financial condition to indicate that its rates are not fairly remunerative.

"Now these defendants say that said railway company under the purported authority of said order of the Interstate Commerce Commission have published in said Tariff 2-B and are applying, and propose to continue to apply, to shipments in intrastate movement between points on its lines, and between points on its lines and points on the lines of other carriers in Texas, both standard and differential rates much higher than those prescribed therefor by the Railroad Commission of Texas, and much higher than those which the Interstate Commerce Commission in the findings above quoted found to be just and reasonable and 'fairly remunerative,' which rates so applied are unreasonably high when measured by the findings of the Interstate Commerce Commission quoted above. The Interstate Commerce Commission was without power to impose upon such intrastate commerce such unreasonable rates. Illustrative of this, it is shown that prior to the making of said order and now the class rates prescribed by the Railroad Commission of Texas for movements on said line for distances of 10 miles and less were:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	13	13	10	8	6	7	6	5	5	4

(no differentials), while the rates now charged under such purported authority for such distances in differential territory are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	23	19	16	14	10	10	8	7	6	5

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	2	2	1	1	1	1	1	1	1	1

the class rates prescribed by the Railroad Commission of Texas for distances of 20 miles are as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	17	15	13	11	9	10	8	6	6	5

(no differential), while those now in charge by said road under such purported authority for said distance in differential territory are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	27	22	19	16	12	13	10	9	8	6

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	2	2	1	1	1	1	1	1	1	1

the class rates prescribed by the Railroad Commission of Texas for distances of 50 miles are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	27	25	23	21	18	19	16	13	11	9

(no differential), while those now charged for said distance under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	27	31	26	22	18	19	15	13	11	9

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	4	3	2	2	1	2	1	1	1	1

the class rates prescribed for distances of 100 miles by the Railroad Commission of Texas are as follows:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	44	41	38	35	26	27	24	21	16	13

(no differentials), while those now charged by said road under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	53	45	37	32	27	28	21	19	16	13

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	10	9	8	7	6	7	5	4	3	3

the class rates prescribed by the Railroad Commission of Texas for distances of 200 miles are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	70	65	58	56	39	40	37	31	22	17

(no differentials), while those now charged by said road for such distances in differental territory under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	80	68	56	48	40	42	32	28	24	20

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	20	19	18	17	11	13	10	9	8	7

the rates prescribed by the Railroad Commission of Texas for distances of 250 miles between points on said road are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	90	78	60	58	44	46	40	34	23	17

(no differentials), while the rates charged on such movements in differential territory by said road under such purported authority are:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	90	77	63	54	45	47	36	32	27	22

plus the following differentials:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates	25	23	21	20	14	15	13	12	11	10

"Similar illustrations apply to rates prescribed by the Railroad Commission for the movement of various commodities and the rates now charged thereon in differential territory by said road under such purported authority.

"(6) Said portions of the order as applicable to shipments between points on the line of the Fort Worth & Denver City Railway Company in differential territory produce unjust and unlawful discriminations against intrastate traffic between such points and against the cities and town shippers located and doing business at such points. Illustrative of this, these defendants show unto the court the following: That no shipment between Shreveport, Louisiana, and any point on said lines can be made, on account of physical location, unless the same shall travel at least 223 miles, and no shipment between Shreveport, Louisiana, and any point on said lines in differential territory can be made unless the same shall travel more than 400 miles, and no shipment can be made between Shreveport, Louisiana, and any point in Texas unless the same shall travel more than 20 miles; that the rates prescribed by the Railroad Commission of Texas,—part of which are shown above,—applicable to shipments between points on said lines were, by the Interstate Commerce Commission, found to be 'fairly remunerative,' and just and reasonably high. Notwithstanding the premises, however, said portions of said order, as construed by the plaintiffs, undertake to authorize and prescribe rates for application to intrastate movements between points on said lines in differential territory, for distances of 20 miles, and for other distances, much higher than those found to be reasonable and much higher than those authorized for application to shipments between Shreveport and all Texas points for all distances of less than 400 miles.

"(7) Said portions of said order, as so construed by the plaintiffs, undertake to authorize and require like unjust and unlawful

discriminations against all cities and towns and shippers in differential territory, and against all shipments between points within such territory.

"(8) By reason of each and all of the premises, it plainly results from the order itself and the report accompanying it that the order, and the portions thereof specifically mentioned, was based upon the assumption by the Interstate Commerce Commission of powers not conferred by law, and even though the order may be couched in such form to appear, when superficially considered, to involve but the exercise of an authority vested in the Commission the form given it does not give it validity, and does not relieve the court from the duty of correcting the abuse of the power assumed or sought to be exercised or from the duty of refusing to enforce or give effect thereto.

"(9) Even though the power exercised in the order, and the portions thereof specifically mentioned, was vested in the Interstate Commerce Commission, it plainly appears from said order and the report accompanying the same, and from the inevitable results thereof, that such power has been exercised in such an unreasonable and arbitrary manner as to bring it within the rule that the substance and not the shadow determines the validity of the exercise of the power, and the substance and inevitable result of the order, and such portions thereof renders the attempted exercise of the power void, and the same should not be enforced or given effect, but should be set aside in whole and in part.

"Wherefore, for each and all of the reasons and premises above set forth, these defendants pray that all relief prayed for by plaintiffs be denied, and that said supplemental bill of complaint be dismissed for lack of equity, and that said order and such portions of the same be set aside." (Record, pp. 45-54.)

Appellants also alleged that the district court of Travis county, Texas, had properly acquired jurisdiction of the matters involved in said cause No. 34,832 (in the State court) prior to the filing of appellees' said second supplemental bill of complaint, and that the district court of the United States ought not to take juris-

diction over such matters, and ought not to seek to oust said State court of jurisdiction of such matters. (Record, p. 43, paragraph 9.)

Appellants prayed that appellees be denied all relief, that their said second supplemental bill of complaint be dismissed for lack of equity, and that the order of the Interstate Commerce Commission in whole or part be set aside and annulled. (Record, p. 54.)

The United States and the Interstate Commerce Commission had theretofore on the — day of September, 1916, been made parties defendant in said equity No. 295 (Record, pp. 194, 220), and on April 4, 1917, the United States, through the Attorney General, had filed therein a special appearance and motion. (Record, p. 566.)

On September 6, 1917, copies of appellants' "Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint" were, by mail, sent to the Attorney General of the United States, and the Interstate Commerce Commission, by appellants herein, and, on said date, copies of the order of Judge Batts setting the matters for hearing on September 20, 1917, were also sent to such parties (Record, pp. 566-67), the copies of said answer and reply being exactly the same as the original, except that the following words in the concluding sentence thereof, towit: "and that said order be set aside," were omitted from such copies by mistake. (Record, p. 567.)

On September 20, 1917, Hon. Albert L. Hopkins, attorney for the Interstate Commerce Commission, was present at said hearing, and stated that he had had conversation with a member of the force of the Attorney General of the United States with respect to said reply and answer several days prior to September 20, 1917.

On September 21, 1917, by leave of the court, during the progress of the hearing upon the matters involved, the appellants filed a trial amendment, as follows:

"And now on September 21, 1917, defendants, B. F. Looney and Luther Nichols, by leave of the court, amend their 'Reply and

Answer to Plaintiffs' Second Supplemental Bill of Complaint' by adding thereto the following paragraphs, towit:

XIII.

"By reason of each and all of the premises, these defendants pray that the order hereto entered in equity cause No. 295, granting plaintiffs and intervenors therein an interlocutory injunction be vacated and set aside in whole.

"In the alternative they pray that said order be modified to the extent necessary for the granting of all relief prayed for by these defendants in their 'Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint,' and prayed for in this amendment thereto.

XIV.

"These defendants pray that, by reason of each and all of the premises, this court now enter its order restraining the plaintiffs and each of them from further applying or charging the differential rates now charged by them, or any differential rates in excess of those prescribed therefor by the Railroad Commission of Texas and under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of 351 miles or less, pending the final hearing of equity No. 295 or the further orders of this court.

"In the alternative they pray that this court now enter its order restraining the plaintiffs from charging the differential rates now charged by them, or any differential rates in excess of the differential rates prescribed therefor by the Railroad Commission of Texas, and under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of 30 miles or less, pending the final hearing of equity No. 295 or the further orders of the court.

XV.

"These defendants pray that this court now enter its order suspending the operation of the order of the Interstate Commerce

Commission of date July 7, 1916, in whole, pending the final hearing of equity No. 295 or the further orders of the court

"In the alternative they pray that this court now enter its order suspending said order in whole with respect to intrastate rates pending the final hearing of equity No. 295 or the further orders of the court.

"Further, in the alternative, they pray that this court now enter its order suspending said order of the Interstate Commerce Commission with respect to the application of differential rates on intrastate shipments moving for distances of 351 miles or less pending the final hearing of equity No. 295 or the further orders of the court, and suspending such orders in other respects where the premises and the evidence may show the same to be invalid." (Record, pp. 53-56.)

The order, granting leave to file said trial amendment, reads as follows:

"On this day came on to be heard the request of the defendants, B. F. Looney and Luther Nickels for leave to file a trial amendment, a copy of which was submitted to the court, and the court, after considering the same, is of opinion that only that portion of said supplemental answer as contained in the numbered paragraph XIV may be pertinent so far as the construction and meaning of the order of the Interstate Commerce Commission of July 7, 1916, is concerned, and for that purpose may be considered by the court.

"It is therefore ordered that said supplemental answer, subject to the foregoing limitations, may be filed.

"To which action of the court in limiting said answer defendants duly excepted and plaintiffs excepted to the filing or any consideration of said amendment upon the ground that same was a departure from subject matter of the original suit and involved an attempt to set aside in whole or in part the order of the Interstate Commerce Commission, which could not be done without making the United States a party to this proceeding and serving notice upon the Attorney General." (Record, pp. 56-57.)

The hearing began before the bench of three judges, consisting

of Hon. R. L. Batts, circuit judge; Hon. Gordon Russell, United States district judge, and Hon. W. R. Smith, United States district judge, on September 20, 1917, and continued until September 22, 1917, when the following order was entered:

"On this 20th day of September, 1917, came on to be heard the second supplemental bill of complaint by carriers, plaintiffs and intervenors, in the above entitled case, seeking to enjoin defendants, B. F. Looney, Attorney General of the State of Texas, and Luther Nickels, Assistant Attorney General of the State of Texas, and associates, and all other persons from the prosecution of suit No. 34,832 in the district court of Travis county, Texas, and from instituting or prosecuting any similar suit in said court or any other court other than the United States District Court for the Western District of Texas, and from in any way or manner whatever attempting to interfere or prevent plaintiffs in the said second supplemental bill of complaint from charging the rates prescribed in Texas Lines Tariff 2-B and supplements thereto, and all parties, plaintiff and defendant, appeared and announced ready, and it appearing to the court that the said suit, No. 34,832, styled State of Texas vs. Abilene & Southern Railway Co. et al., was filed in the district court of Travis county, for the Fifty-third Judicial District, on July 20, A. D. 1917; that heretofore, towit, said supplemental bill of complaint herein was ordered to be filed on August 4, 1917, by R. L. Batts, circuit judge for the Western District of Texas, being disqualified, and the Hon. W. R. Smith, district judge of the United States for the Western District, being absent from said district, and the said second supplemental bill with prayers therein for injunction was set down for hearing before said Circuit Judge R. L. Batts on August 9, 1917. That upon said date defendants, B. F. Looney and Luther Nickels, by answer filed, suggested that the proper disposition of the matters embraced in said second supplemental bill of complaint demanded the presence and hearing of the same before three Federal judges, under and by virtue of the terms of Section 266 of the Judicial Code of 1911. That thereupon the said R. L. Batts, circuit judge,

called to his assistance Judge Gordon Russell, United States judge for the Eastern District of Texas, and Judge W. R. Smith, district judge for the Western District of Texas, and set the cause for hearing at Austin before said special court September 20, 1917, and said special court having duly convened at said time and place and the court having heard the pleadings and evidence produced and arguments of counsel, is of opinion that the law is with plaintiffs.

"Whereupon, it is ordered, adjudged and decreed by the court that the prayer for injunction as in said second supplemental bill of complaint prayed for be and the same is hereby granted, and it is ordered and decreed by the court that the defendants, B. F. Looney, Attorney General of the State of Texas, and Luther Nickels, Assistant Attorney General of the State of Texas, their associates and all other persons, be and they are hereby restrained and enjoined from prosecuting said suit No. 34,832 in the district court of Travis county, Texas, and from instituting or prosecuting any similar suit in said court or any other court than the United States District Court for the Western District of Texas, and from in any way or manner whatsoever attempting to interfere or prevent plaintiffs in said second supplemental bill of complaint herein from charging the rates prescribed in Texas Lines Tariff 2-B and supplements thereto.

"It is further ordered by the court that all prayers for affirmative relief by said defendants herein be and the same are hereby denied.

"And thereupon came on to be heard the application of defendants, B. F. Looney and Luther Nickels, for an appeal from the decree herein rendered, to the Supreme Court of the United States, and the same is allowed in open court, and bond for such appeal is fixed at the sum of one thousand dollars, conditioned and secured as required by law, without supersedeas, to be approved by the clerk of the District Court for the Western District of Texas." (Record, pp. 57-59.)

On September 21, 1917, appellants filed and duly presented

their petition for appeal from the aforesaid order, and the same was allowed. (Record, pp. 570-571.) At the same time assignments of error were presented and filed by appellants, the same being set forth hereinafter. (Record, pp. 571-576.)

On October 5, 1917, appellants filed and had approved their bond on appeal as required by the aforesaid order of the court. (Record, pp. 577-578.)

Issuance and service of citation on appeal was waived by appellees on September 22, 1917. (Record, pp. 578, 579.)

An agreed praecipe was filed on September 27, 1917. (Record, pp. 579 to 581.)

An agreed statement of evidence on appeal, approved by the court, was filed on October 5, 1917. (Record, pp. 111 to 569.)

Specifications of Error.

A.

"The court and judges thereof erred in granting the plaintiffs the interlocutory injunction as prayed for by them, and as granted by order of September 22, 1917, because Section 265 of the Judicial Code (36 Stat. at L. 1, 1162) prohibits such action and such injunction." (Record, p. 571.)

I.

"The court and the judges erred in granting the interlocutory injunction as prayed for by plaintiffs, and as granted, because the plaintiffs and the court misconstrued the order of the Interstate Commerce Commission, of date July 7, 1916, with respect to differential rates applicable to intrastate shipments moving for distances of three hundred and fifty-one (351) miles or less because, as is apparent from the report of the Interstate Commerce Commission and the record in this case, there can not be a shipment between Shreveport, Louisiana, and any point in differential territory in Texas which does not move for a distance of more than 351 miles, and because paragraphs 9 and 10 of said order only prohibit plaintiffs from charging rates on shipments between

Shreveport, Louisiana, and points in differential territory in Texas in excess of rates contemporaneously applied by them 'for the transportation of like property for like distances between points in Texas,' and because paragraphs 9 and 10 of said order would be complied with literally and in substance by the carriers by the application to shipments moving between points in Texas for distances of 351 miles and less of rates no lower than those contemporaneously applied to shipments moving between Shreveport, Louisiana, and points in Texas distant 351 miles or less; whereas, under the construction given said order by the plaintiffs and the court, the plaintiffs have charged, and will charge, rates on shipments moving for distances of 351 miles or less between points in Texas, which are materially higher (when such shipments are within differential territory in whole or part) than rates contemporaneously charged on shipments moving for distances of 351 miles or less between Shreveport, Louisiana, and points in Texas." (Record, p. 574.)

II.

"The court and the judges thereof error in refusing to grant unto these defendants an interlocutory injunction, as prayed for by them in paragraph XIV of the amendment to their answer and reply to plaintiffs' second supplemental bill of complaint, restraining the plaintiffs, and each of them, from further applying or charging the differential rates now charged by them, or any differential rates in excess of those prescribed therefor by the Railroad Commission of Texas and under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of 351 miles or less, because the order of the Interstate Commerce Commission of date July 7, 1916, does not authorize or purport to authorize the plaintiffs to charge, for such shipments, differential rates in excess of those prescribed therefor, and under the conditions therefor prescribed, by the Railroad Commission of Texas, and because if said order did undertake to authorize the plaintiffs to charge for such shipments differential rates other

than those prescribed therefor by the Railroad Commission of Texas the same was and is void and unenforcible." (Record, p. 575.)

III.

"The court and the judges thereof erred in failing and refusing to grant to these defendants an interlocutory injunction, as prayed for by them, restraining the plaintiffs, and each of them, from charging the differential rates now charged by them, or any differential rates in excess of those prescribed therefor by the Railroad Commission of Texas, under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of 20 miles or less, because the order of the Interstate Commerce Commission does not authorize, cannot lawfully authorize, and does not purport to authorize the plaintiffs to charge for such shipments differential rates in excess of those prescribed therefor by the Railroad Commission of Texas, and because said order, if it does undertake to authorize plaintiffs to charge differential rates on such shipments in excess of those prescribed therefor by the Railroad Commission of Texas, is void and unenforcible." (Record, p. 575.)

IV.

"The court and the judges thereof erred in granting the interlocutory injunction as prayed for by plaintiffs, and as granted, because if the order of the Interstate Commerce Commission, of date July 7, 1916, undertakes to authorize the plaintiffs to charge differential rates on shipments moving for distances of 351 miles or less between points within Texas, the order is void in whole or in this respect because, in such event, the same undertakes to, and does, create unjust and unreasonable discrimination against intrastate commerce and each and all of the various towns, cities, localities and shippers located within differential territory in Texas and by reason thereof, in such event, the Interstate Commerce Commission grossly abused such powers as it had and exceeded its lawful authority; and, as illustrative thereof, it affirmatively appears from said order and report and the record in this case, that

under such construction of the order a merchant located at El Paso, Texas, would be compelled to pay $1.36 per hundred pounds on merchandise classed as first class, moving to Sweetwater, Texas, 412 miles east of El Paso; while a Shreveport, Louisiana, merchant would only be compelled to pay $1.06 per one hundred pounds for the transportation of like property from Shreveport, Louisiana, to Sweetwater, Texas, a distance of 423 miles, Sweetwater, Texas, being on a direct line between Shreveport, Louisiana, and El Paso, Texas, and a like discrimination, under such construction of said order, exists against all localities and shippers within differential territory in Texas." (Record, p. 574.)

V.

"The court and the judges thereof erred in failing and refusing to enter an order suspending in whole or in part the order, and paragraphs IX and X of the order, of the Interstate Commerce Commission of date July 7, 1916, pending the final hearing of equity 295, or the further orders of the court, because said order, and the various parts thereof, were and are void and unenforcible for each and all of the reasons pleaded and assigned in the various sub-paragraphs of subdivision XII of these defendants' 'Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint,' here referred to and made a part hereof, which reasons, in brief, are as follows:

"1. The order contravenes the proviso of Section 1 of the Act to Regulate Commerce, wherein intrastate commerce is defined.

"2. The order is too indefinite as to the territory to which it might lawfully apply, and the territory commercially tributary to Shreveport, Louisiana, to be enforcible.

"3. There can be no interstate shipment between Shreveport, Louisiana, and any Texas point which does not move more than 20 miles, and the order in so far as it undertakes to prescribe interstate rates for 20 miles, or less, shipments and to make the same the measure of the State rates for such distances, is void.

"4. The Interstate Commerce Commission based material por-

tions of the order upon grounds and reasons which it had no lawful right to consider, towit: the prevention of discrimination against intrastate commerce, growing out of intrastate rates and commerce; and the question of the adequacy of the State rates.

"5. The order, as construed by the plaintiffs and the court, undertakes to produce, and inevitably does result in, manifold unjust discriminations against Texas localities and shippers.

"6. In addition to the assumption of powers not possessed, the Interstate Commerce Commission, in making the order, exercised the powers possessed by it in an unreasonable, harsh and arbitrary manner so as to render the order void." (Record, pp. 575-576.)

VI.

"The court and judges thereof erred in granting the interlocutory injunction as prayed for by plaintiffs, and as granted, because the order of the Interstate Commerce Commission, of date July 7, 1916, as construed by the court and the judges thereof, and as enforced by said order, and otherwise, was and is void, because the same contravenes that portion of Section 1 of the Act to Regulate Commerce wherein it is provided: 'That the provisions of this act shall not apply to the transportation of * * * property, or to the receiving, delivering, storage, or handling of property, wholly within one State or Territory, as aforesaid.'" (Record, p. 571.)

VII.

"The court and the judges thereof erred in granting plaintiffs the interlocutory injunction as prayed for by them and as granted, because the order of the Interstate Commerce Commission, of date July 7, 1916, upon which plaintiffs' prayer was based, is void and unenforcible because the same is too indefinite as to the points or territory to which it might lawfully apply, and because the same does not in any way, directly or by reference, define the territory in Texas commercially tributary to Shreveport, Louisiana, or the points or territory within Texas in or with respect to which there is competition between the shippers of Shreveport, Louisiana, and

the shippers of any Texas points, or in or with respect to which there was, is, or can be, any undue discrimination against Shreveport, Louisiana, or the shippers thereof, by reason of the relation of State and interstate rates." (Record, p. 572.)

VIII.

"The court and the judges thereof erred in granting the interlocutory injunction as prayed by plaintiffs, and as granted, because the order of the Interstate Commerce Commission, of date July 7, 1916, upon which plaintiffs' claim for relief is based, was and is, void, because, as affirmatively appears from the record accompanying said order on pages 120 and 121 thereof, the Interstate Commerce Commission undertook to make said order applicable to territory in Texas west of 'East Texas' (as defined in 34 I. C. C., 472), in an effort to prevent supposed discrimination as between localities and cities within Texas with respect to movements in intrastate commerce, and did not make the order so apply to prevent undue discrimination against interstate commerce and because of the premises the Interstate Commerce Commission committed an error of law and exceeded its power to such an extent as to render said order and paragraphs 9 and 10 thereof void and unenforcible." (Record, p. 572.)

IX.

"The court and the judges thereof erred in granting the interlocutory injunction as prayed for by plaintiffs, and as granted, because the order of the Interstate Commerce Commission, of date July 7, 1916, upon which plaintiffs' claim for relief was based, was, and is, void in whole or part because, as affirmatively appears on pages 91 to 95, and pages 100 to 107 and Appendix C, and other portions of the report accompanying said order, the Interstate Commerce Commission in undertaking to prescribe and authorize,—if it did so by said order,—rates and regulations as applicable to intrastate shipments in excess of those therefor prescribed by the Railroad Commission of Texas and especially the

differential rates involved, was seeking to increase the revenues of the carriers, to condemn such intrastate rates as being inadequate, and to substitute for such State rates rates which it thought to be adequate,—and thereby said Commission committed an error of law and exceeded its lawful authority to such an extent as to render said order void and unenforcible. In this connection, appellants say that the Interstate Commerce Commission had no lawful authority to inquire into or pass upon the question of the unreasonableness of such State rates, but that its lawful jurisdiction was limited to the existence and removal of actual and undue discrimination against interstate commerce." (Record, p. 573.)

X.

"The court and the judges thereof erred in granting unto the Fort Worth & Denver City Railway Company, one of the plaintiffs, an interlocutory injunction as prayed for by said company, and as granted to it, for the reason that the report of the Interstate Commerce Commission, of date July 7, 1916, and especially pages 173 and 174 thereof, affirmatively show and find that rates prescribed by the Railroad Commission of Texas applicable to intra-shipments on the line of said company, and especially the differential rates therefor prescribed, are adequate and reasonable and are such as to bring the said company a reasonable return upon its investments, and by reason of this fact and finding the Interstate Commerce Commission had no lawful authority to authorize, and therefore did not authorize, said company to set aside such State rates and to substitute therefor the high rates which it has done, and will do, and thereby impose upon the shippers unreasonable rates." (Record, p. 573.)

XI.

"The court and judges erred in granting the interlocutory injunction as prayed for by plaintiff, and as granted, because said order of the Interstate Commerce Commission, dated July 7, 1916, as construed by plaintiffs and by the court, undertakes to

prescribe interstate rates applicable between Shreveport, Louisiana, and points in Texas for all distances from one (1) mile to twenty (20) miles, and to make the same the measure of what plaintiffs call the 'standard rates' between points within the State of Texas for such distances, although the shortest distance between Shreveport, Louisiana, and any Texas point, by the line of any railway, is more than twenty (20) miles; said portions of the order cannot, therefore, be properly construed as applicable to shipments moving between points in Texas for distances of twenty (20) miles or less, and if so construed, or applicable, the same is void in whole, or, at least, to such extent; and the court erred in granting an interlocutory injunction with respect to intrastate movements for distances of twenty (20) miles or less." (Record, p. 573.)

PROPOSITIONS AND ARGUMENT.

A.

The court and judges thereof erred in granting the plaintiffs the interlocutory injunction as prayed for by them, and as granted by order of September 22, 1917, because Section 265 of the Judicial Code (36 Stat. at L., 1, 1162) prohibits such action and such injunction. (Record, p. 571.)

B.

The order entered by the three judges at New Orleans on April 20, 1917 (Record, pp. 109-110), was void because:

(I) The cause was heard, and said order rendered, outside of the territorial jurisdiction of the District Court of the United States for the Western District of Texas.

(II) Because the judge of said district court did not participate in such hearing or order, it not appearing that he was disqualified, absent from the district, or otherwise not able to act.

And said order, therefore, did not involve the exercise of jurisdiction by said district court over the subject matter of the State court suit, even though it were conceded that such subject matter

was included in the pleadings in equity 295, and even though it were conceded that such matter was covered by said decree.

REMARKS UNDER "A" AND "B."

That Section 265 of the Judicial Code would prohibit the relief granted the appellees in this proceeding, if this were an original proceeding, will not be denied. That it prohibits the same whether appellees' second supplemental bill and appellants' answer thereto constitute an original proceeding or an ancillary proceeding is the contention of appellants, for this is the plain language of the statute. Counsel for appellees in the trial court sought to bring the matter within the recognized exceptions to Section 265 by saying that the three-judge court in the order referred to had actually exercised jurisdiction over the subject matter of the State court suit, and that such suit, if prosecuted successfully, would interfere with and defeat the relief granted by the three judges at New Orleans. It is our contention that the subject matter of the State court suit was not involved in the pleadings before the three judges, but that if it was so involved jurisdiction had not been exercised thereover and a decree as prayed for in the State court suit would not at all interfere with the relief granted the appellees at New Orleans,—even assuming such order of the three judges to be valid. As stated before, the New Orleans order simply enjoined the appellants, and others, from prosecuting suits for penalties, damages, etc., for failure of the appellees to charge the rates prescribed by the Railroad Commission of Texas, when such rates, etc., conflicted with those authorized by the order of the Interstate Commerce Commission. The State court suit did not involve any claim for penalties, damages, etc.,—the prayer for relief being simply for injunction to prevent the charging of rates on certain intrastate shipments in excess of those authorized by the Railroad Commission in instances where such rates did not conflict with those prescribed by the Interstate Commerce Commission. That there was no such conflict is presented at length hereinafter. Under this view, the State

court suit, instead of threatening interference with the order of the Interstate Commerce Commission, if successful, would have aided in the enforcement of such order,—not directly, but indirectly by requiring the carriers to observe the State-made rates in those instances where the Interstate Commerce Commission did not intend that they should be superseded. The order of the three judges at New Orleans, therefore, did not say that appellees had the right to charge the "Differential Rates" actually being charged by them, or that they had the right to ignore the State rates in such instances, but, on the contrary, by limiting its terms to instances where there was a conflict between the order of the Texas Commission and of the Interstate Commerce Commission, it said, in effect, that the carriers had not the right to supersede the State rates in the instances involved in the State court suit. So, in our view, the three judges, at New Orleans, did not attempt to exercise jurisdiction over the subject matter of the State court suit.

But, if we are in error in this, we say that the order entered at New Orleans was void because not rendered by any court known to the law and because rendered outside the territorial jurisdiction of the court in which the suit was pending,—the only court, according to the allegations of the bill itself which had jurisdiction over the persons of the appellees and other defendants therein. We say, therefore, that such order is wholly insufficient to constitute an exercise of jurisdiction by the District Court for the Western District of Texas, in such a way as to bring the matter within the exceptions to Section 265 of the Code.

Our understanding of Section 266 of the Judicial Code is that it does not create a new court; nor does it change or extend the territorial limits of any existing court. (Ex Parte Metropolitan Water Company, 220 U. S., 539, 544.) The opinion in the case just cited speaks of a court convened under Section 266 as the "*enlarged court*,"—and this, we take it, means the district court as enlarged by the calling in of the other two judges. The judgment to be rendered by the "enlarged court" is, nevertheless, the

judgment of the district court in which the case is filed; and if so, then it would seem clear that a judgment rendered by the district court at a place hundreds of miles away from its district would be a nullity. This order shows in its face that the application therefor was heard at New Orleans, Louisiana, there passed upon by three judges, neither of whom was judge of the District Court for the Western District of Texas, and that the order was signed and rendered by said three judges. (Record, pp. 109-110.) It would seem clear that an order rendered in a case pending in a district court by three judges, none of whom was a judge of said court,—when it does not appear that the judge of such district court is not able to act,—would be a nullity. There is no showing in the record that the judge of the district was disqualified, absent, sick, or otherwise unable to act; it is true that when the application was presented to Judge Pardee at Atlanta, Georgia, on September 2, 1916, the district judge was unable to act, but no such showing is made with respect to the time when the hearing was had at New Orleans, and it is our understanding that the district judge at that time was within his district and able to act.

It is our view that the Circuit Court of Appeals, and the judges thereof, have no original jurisdiction in cases of this kind, and that only the district court has such jurisdiction. True, provision is made for the acting of the circuit judges in certain cases, but the provision of Section 266, upon this point, is that when a circuit judges does act he acts "as district judge." This provision, we think, compels the idea that it is still the district court, and not a new court, which proceeds under Section 266, and this idea is strengthened by the fact that an appeal, if taken, must be prosecuted from the district court. The case being filed in the District Court for the Western District of Texas, and being required to be filed there by Secton 51 of the Code, the application for injunction being required to be presented to and passed upon by the district court (as enlarged) by Section 266, and Section 58 of the Code (being the only statute upon the subject),

only providing for transfers of civil cases from one division to another in the same district, we say that the matter could not lawfully be transferred to New Orleans, Louisiana, and there heard and determined, even by consent of the parties. We submit, therefore, that the action of the three judges at New Orleans was a nullity, and is wholly insufficient to constitute the exercise of jurisdiction over the subject matter involved in the State court suit. If this be true, then the Federal court had not acted, and had not rendered a decree touching the matter prior to the institution of the suit in the State court, and the exercise of jurisdiction therein by the State as manifested by its order requiring the petition to be filed and setting the application for injunction for hearing and ordering notice to issue thereon; and, therefore, the action taken in the district court, from which this appeal is prosecuted, was not in aid of its jurisdiction to render its prior decree effectual, as was the case in Julian vs. Central Trust Co., 193 U. S., 112, and in the other cases which hold Section 265 inapplicable.

I.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION NEITHER AUTHORIZES THE APPELLEE CARRIERS TO CHARGE OTHER THAN THE TEXAS COMMISSION'S "DIFFERENTIAL RATES" ON INTRASTATE SHIPMENTS MOVING FOR DISTANCES OF 400 MILES OR LESS, AND, THEREFORE, THE RELIEF GRANTED APPELLEES BY THE TRIAL COURT IN THIS PROCEEDING WAS NOT WARRANTED, BUT, ON THE CONTRARY, THE PRAYERS OF PARAGRAPH XVI OF APPELLANTS' ANSWER SHOULD HAVE BEEN GRANTED.

We are unable to find in the order or report of the Interstate Commerce Commission of July 7, 1916, one word which can be construed as requiring or authorizing the carriers to apply the "Differentials" published in Tariff 2-B to intrastate shipments

moving for distances of less than 400 miles. The literal terminology of the order is to the contrary. Under the broadest possible construction it only purports to say to the carriers: "You may charge these differentials on shipments moving between Shreveport, Louisiana, and points in 'Differential Territory,' and if you do so you must not apply to State shipments moving 'like distances' a lower rate than is applied to the interstate shipments." The order must be read as authorizing the carriers to charge for intrastate shipments a rate which is uniformly and substantially *higher* than the interstate rate, for all distances less than 400 miles, before any justification can be found in it for what is being done. Paragraphs "IX" and "X" of the order only purport to require a *parity* of rates for like distances; the carriers are applying the order so as to produce not a *parity*, but an universal and substantial inequality, as between the State and interstate rates involved,—patently, an undue discrimination against intrastate commerce. This result, as is clear from the statement of the case, necessarily follows because no Shreveport shipment can be made to or from "Differential" points unless it moves for more than 400 miles.

Furthermore, the construction and application of this portion of the order by the carriers runs counter to the whole purpose of the order as manifested therein and as manifested in the report accompanying it. The carriers very strenuously contend, in an effort to defeat the jurisdiction of the District Court for the Western District of Texas with respect to certain features of the case, that the order was made wholly and entirely upon the "petition" of the Railroad Commission of Louisiana; the record before the Commission and the necessary effects of the order under any construction of it, we think, very clearly show that while substantial portions of it were made upon such petition other substantial portions were made upon the "petitions" of other parties; but, be this as it may, the nature of the "petition" of the Railroad Commission of Louisiana is certainly of great value in determining what the Commission meant by its order. This "petition" sets

forth what was claimed to be just and reasonable "Differential Rates" for interstate application, and says that the same "SHALL NOT BE AVAILABLE WHEN THE ENTIRE DISTANCE TRAVERSED IS 400 MILES OR LESS." (Record, p. 388, lines 40-41.) Since the order simply prescribes interstate rates ("Differential"), and since, on account of geography, these interstate rates cannot, possibly, apply unless "the entire distance traversed" is more than 400 miles, it seems very clear that the Commission did, and intended to, adopt the idea conveyed by that portion of the "petition" just quoted. That this is exactly what was done in so far as the application of these interstate rates is concerned is absolutely certain; but when the carriers came to make the State rates, instead of using the interstate rates as the measure thereof, they installed a system which results in charging the "Differentials" even where the "entire distance traversed" is only ten miles, and this, necessarily, results in charging the shipper in intrastate commerce a rate much higher than is charged the Shreveport shipper whose goods move "like distances."

The carriers, throughout the various branches of this litigation, contend that the case before the Commission was purely a "discrimination case"; as will be pointed out in subsequent portions of this discussion, it has indicia of other elements, but certainly the power of the Commission to affect State-made rates was dependent, alone, upon the existent fact of "discrimination" against interstate commerce and the necessity for its removal. To say that the Commission may go further and, after having removed the existent discrimination against interstate commerce by requiring a parity of rates for like distances, create discrimination against intrastate commerce, is to ascribe to it a power which it has never claimed for itself and which nobody, except the appellee carriers, has ever claimed for it. If the Commission, in the order in question, has undertaken to authorize what has been done by the carriers, then, in that event, the conclusion is inevitable that it intended to produce against State traffic a "discrimination" which is universal and whose volume sinks to insignificance that com-

plained of by Shreveport. Specific illustrations of the necessary effect of the order as applied by the carriers were pleaded and proved and are set forth in the statement of the case; but one, illustrative of the entire situation throughout a hundred thousand square miles or more of territory in Texas, will bear reiteration: El Paso, Texas, is 412 miles west of Sweetwater, Texas; Shreveport, Louisiana, is 423 miles east of Sweetwater, Texas (all three points being on a line of the Texas & Pacific Railway); if the El Paso merchant desires to ship 100 pounds of merchandise, first class, to Sweetwater, he is now required to pay therefor $1.36, while the Shreveport merchant is only required to pay, for the shipment to Sweetwater of 100 pounds of the same class of merchandise only $1.06 (Record, p. 42); or if the El Paso man only ships eastward 50 miles, he pays 42 cents per 100 pounds, first class, while the Shreveport man, shipping to or from a point in Texas 50 miles distant, only pays 37 cents. (Record, p. 41.) Here, then, is a patent, undoubted, material discrimination against State traffic; the carriers (who, according to the allegations of their original bill, are interested in sustaining the entire order of the Commission to the extent of "several million dollars" per year, Record, p. 125, lines 19-37) say that this is what the order means, and what the Commission intended for it to mean, and as a reason therefor they say the State-made rates are too low. But this argument of the carriers ascribes to the Commission the intended use of another power which this court very clearly said (in American Express Co. et al. vs. Caldwell, 244 U. S., 617) it did not have, namely, the power to pass upon the reasonableness of State rates. That it was not necessary to require the application of "Differential Rates," where the shipment does not move more than 400 miles, in order to prevent "unjust discrimination" against Shreveport, Louisiana, is the formally expressed declaration of Shreveport's own "petition" in the case, as pointed out above. If, therefore, the carriers are right in their construction of the order, the Commission was simply seeking to give the railroads increased revenues while ostensibly making an effort to prevent unjust discrimination

against Shreveport. The record before the Commission fully warrants the assertion that Shreveport has not been overly modest in its claims of discrimination; and when its representatives solemnly say, in effect, that it is not necessary to the granting of complete relief that the "Differentials" be made applicable to shipments "where the entire distance traversed" is 400 miles or less, this statement, it seems to us, ought to be conclusive upon the point. In view of the fact that in order to give the Commission's action the effect claimed for it, it is necessary for the court to say that the relief granted is much broader than that prayed for by the party complaining of discrimination and alleged to be necessary; and it is further necessary to say either that the Commission, in this part of the order, was seeking to give the carriers relief against the State-made rates as such or that it deliberately attempted to produce discrimination against intrastate commerce. We submit that the interpretation placed upon the order by the carriers runs counter to every idea of construction heretofore conveyed by the opinions of the courts.

It is our idea that when an absolute parity of rates, for like distances, exists there cannot be any warrant for a charge of unjust discrimination. The idea of rate parity is totally inconsistent with the idea of unjust discrimination. For all distances up to 245 miles the State and interstate rates,—under our construction of the order,—would be exactly the same, and for these distances both rates would be those shown on page 184 of the Record. Certainly, and at all events, there can be no just complaint from the standpoint of interstate commerce if the State rate is actually higher, mileage considered, than the interstate rate. That this is true is expressly stated by the Commission in its discussion of rates from Galveston, Texas, as compared with rates from Shreveport. Says the Commission: "The application of higher rates from Galveston than from Shreveport * * * certainly cannot prejudice Shreveport." (Record, p. 199, lines 34-36.) Now, under the construction given the order of the Interstate Commission by appellants the rates for all distances between 245

miles and 400 miles would be uniformly higher than the interstate rates applicable between Shreveport and Texas points for like distances. This would be true because after an intrastate shipment had moved 245 miles, the "Differentials" prescribed by the Railroad Commission of Texas would be charged. (Record, p. 505.) In order that the court may have the exact situation before it we set forth, in the table below, the class rates which would be applicable to the Shreveport-Texas traffic and to the intrastate traffic for such distances in ten-mile groups:

Miles. Classes.	1	2	3	4	5	A	B	C	D	E
250—(Shreveport)	90	77	63	54	45	47	36	32	27	22
(Intrastate)	92	79	64	55	46	48	37	33	28	23
260—(Shreveport)	100	75	70	60	50	52	40	35	30	25
(Intrastate)	102	87	72	61	51	53	41	36	31	26
270—(Shreveport)	100	85	70	60	50	52	40	25	30	25
(Intrastate)	103	87	71	61	51	53	41	36	31	26
280—(Shreveport)	100	85	70	60	50	52	40	35	30	25
(Intrastate)	104	88	72	61	51	53	41	36	31	26
290—(Shreveport)	100	85	70	60	50	52	40	35	30	25
(Intrastate)	105	89	73	62	51	54	41	36	31	26
300—(Shreveport)	100	85	70	60	50	52	40	35	30	25
(Intrastate)	106	90	74	63	52	55	42	37	32	27
310—(Shreveport)	103	87	72	62	52	54	41	36	31	26
(Intrastate)	110	93	77	66	55	58	43	38	33	28
320—(Shreveport)	103	87	72	62	52	54	41	36	31	26
(Intrastate)	111	94	78	67	56	59	44	38	33	28
330—(Shreveport)	103	87	72	62	52	54	41	36	31	26
(Intrastate)	112	95	79	68	57	60	45	39	34	28
340—(Shreveport)	103	87	72	62	52	54	41	36	31	26
(Intrastate)	113	96	80	69	59	61	46	40	34	29
350—(Shreveport)	103	87	72	62	52	54	41	36	31	26
(Intrastate)	114	97	81	70	59	62	47	41	35	29
360—(Shreveport)	106	90	74	64	53	55	42	37	32	26
(Intrastate)	118	101	84	73	60	63	48	42	36	29

Miles. Classes.	1	2	3	4	5	A	B	C	D	E
370—(Shreveport)	106	90	74	64	53	55	42	37	32	23
(Intrastate)	119	102	85	74	61	64	49	43	37	30
380—(Shreveport)	106	90	74	64	53	55	42	37	32	26
(Intrastate)	120	103	86	75	61	64	49	43	37	30
390—(Shreveport)	106	90	74	64	53	55	42	37	32	26
(Intrastate)	121	104	87	76	62	65	50	44	38	31
400—(Shreveport)	106	90	74	64	53	55	42	37	32	26
(Intrastate)	122	105	88	77	62	65	50	44	38	31

(The above rates on the "Shreveport" lines are taken from page 184 of the record; the rates shown on the "intrastate" lines are constructed by adding to the "Shreveport" line rates the "Differentials" prescribed by the Railroad Commission of Texas shown on page 505 of the record.)

But notwithstanding the fact of absolute parity in all distances up to 245 miles, the carriers claim the right, from the order, to charge higher rates intrastate than interstate; and notwithstanding the fact that if the State "Differentials" were applied the State rate for all distances between 245 and 400 miles would be higher than the interstate rate, the carriers claim the right, from the order, further to substantially increase the intrastate rate. So far as alleged discrimination against interstate commerce is concerned, we submit that all complaint, and the order itself, would be fully satisfied by a parity of rates for all distances up to 400 miles; the fact that, under our construction of the order, the State rates would be higher than the interstate for distances between 245 and 400 miles, would be due to the concurrent operation of the orders of the Railroad Commission of Texas and of the Interstate Commerce Commission, and since there can be no conflict therein to the detriment of interstate traffic, there can be no warrant for saying that such concurrent operation is inconsistent or unlawful.

Of course, counsel for appellee will point to the results of this contemporaneous application of the State and interstate rates as an instance where a discrimination against State traffic is produced by the State authorities. But it will, we think, be sufficient

answer to say that whatever discrimination is thus brought about operates in favor of appellees and they can not be heard to complain of it, and to say, further, that even though a measurable discrimination against State traffic is thus produced this would not warrant either the railroads or the Interstate Commerce Commission in very substantially increasing it.

We respectfully submit that nothing can be found in the language of the order of the Interstate Commerce Commission, or in the proper implications to be drawn from its language, to warrant the construction and application made of it by the appellee carriers, and that, therefore, the relief granted them should have been denied and that the prayers for relief contained in paragraph XIV of appellants' answer (Record, p. 55) should have been granted.

II.

IF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION HAS BEEN CORRECTLY CONSTRUED AND APPLIED BY THE APPELLEE CARRIERS, WITH RESPECT TO THE APPLICATION AND VOLUME OF DIFFERENTIAL RATES ON INTRASTATE SHIPMENTS MOVING FOR DISTANCES OF 400 MILES OR LESS, THEN SAID ORDER, IN SUCH RESPECTS, IS VOID BECAUSE IN EXCESS OF THE COMMISSION'S POWER AND AFFORDED NO JUSTIFIABLE BASIS FOR THE RELIEF GRANTED AP-INATION AGAINST INTERSTAE COMMERCE.

(I) SAID ORDER, SO CONSTRUED, IS VOID BECAUSE IT GOES FURTHER, MANIFESTLY, THAN IS NECESSARY TO PREVENT UNJUST DISCRIMINATION AGAINST INTERSTATE COMMERCE

(II) SAID ORDER, SO CONSTRUED, IS VOID BECAUSE IT INEVITABLY PRODUCES UNJUST DISCRIMINATION AGAINST INTRASTATE COMMERCE.

(III) SAID ORDER, SO CONSTRUED, IS VOID BECAUSE IT WAS, MANIFESTLY, MADE SO AS TO

GIVE THE CARRIERS RELIEF AGAINST STATE-MADE RATES AND BECAUSE IT WAS NOT MADE TO PREVENT DISCRIMINATION AGAINST SHREVEPORT, LOUISIANA.

Section 3 of the Act to Regulate Commerce was designed to give the Commission power to prevent unjust discrimination against interstate commerce. It would be a perverse malinterpretation of the act to say that Congress intended thereby to authorize the Commission to create and enforce manifest discrimination even against intrastate commerce. Of this subject this court, in Interstate Commerce Commission vs. C., R. I. & P. Ry. Co., 218 U. S., 88, 102, said: "From whatever standpoint the powers of the Interstate Commerce Commission may be viewed, they touch many interests, they may have great consequences. They are expected to be exercised in the coldest neutrality. The Commission was instituted to prevent discrimination between persons and places. *It would indeed be an abuse of its powers to exercise them so as to cause either.*" When it is remembered that the foundation of the jurisdiction of the Commission over the subject matter of this case, in so far at least as its effect on the State-made rates is concerned, was alleged discrimination against one particular locality, towit: Shreveport, Louisiana, and when it is remembered that the order, as applied by the carriers requires the El Paso man to pay $1.36 for a 412-mile haul as against $1.06 paid by the Shreveport man for a 423-mile haul over the same railroad, it must be perfectly clear that the Commission did not stop with removing the possibility of discrimination against the particular interstate traffic in question but that it went much further and required the creation of an undoubted and universal discrimination against all intrastate traffic moving within the distances indicated throughout a very large portion of Texas,—assuming, of course, that the carriers have placed the right interpretation upon the order. Nor does it at all justify the discrimination against intrastate commerce to say,—as the carriers do say,—that the rates prescribed by the Railroad Commission of Texas for application in that terri-

tory are too low, because the Interstate Commerce Commission cannot properly be concerned with the question of the reasonableness of State rates as such. (American Express Co. vs. Caldwell, 244 U. S., 617; Minnesota Rate Cases, 230 U. S., 352; C., M. & St. P. Ry. Co. vs. Public Utilities Commission of Illinois, 242 U. S., 333.) Shreveport could not properly complain of discrimination against Oklahoma City or discrimination against interstate commerce generally; it could only be properly concerned in discrimination against the particular interstate traffic in which it directly participated (Philadelphia, etc., Ry. Co. vs. United States, 240 U. S., 334); the Commission, therefore, was limited in power to affect State-made rates in this case by the existence, and necessity for removal, of discrimination against the particular interstate traffic involved, towit: the Shreveport-Texas traffic. When it required a parity of rates, mileage considered, it certainly removed all ground for any just complaint upon the part of Shreveport. This is unequivocally declared by Shreveport itself in the pleading invoking the jurisdiction of the Commission where it was declared, in effect, that all complaint would be satisfied, with respect to differential rates, if reasonable rates were prescribed and if they should be made available only when the "entire distance traversed" was 400 miles or more. (Record, p. 388.) In view of the fact that there cannot possibly be a shipment between Shreveport and any point in "Differential Territory" which does not move for more than 400 miles, it must be clear that the application of the "Differentials" as prescribed by the Railroad Commission of Texas for distances less than 400 miles will not only produce an absolute parity for distances up to 245 miles, but for distances between 245 and 400 miles the rates charged on intrastate shipments will be higher than the interstate rates for like distances. This, we say, fully satisfies the complaint of Shreveport,—the complaint upon which the Commission was supposed to be acting. That the order of the Interstate Commerce Commission is susceptible of a construction which produces this result, we believe, cannot be questioned. Such a construction of the order, we say,

is necessary in order to bring it within the legal power of the Commission. And such a construction, we say, is the correct one. But if the order is not susceptible of the construction for which we contend, or if, under the circumstances, such construction was not intended by the Commission, then, we submit, the order is void and should not be enforced, because in making it the Commission exceeded its lawful powers and grossly abused the powers lawfully vested in it.

Furthermore, it should be set aside. All necessary parties are before the court. Prior to April 4, 1917, the United States and the Interstate Commerce Commission had been made parties defendant in equity No. 295, by cross-bill filed by defendants therein, and on April 4, 1917, the United States filed its "Special Appearance and Motion" therein. (Record, p. 566.) Copies of appellants "Reply and Answer to Plaintiffs' Second Supplemental Bill of Complaint," together with copies of the order "setting the matters involved in plaintiffs' second supplemental bill of complaint and the answer thereto for hearing for the 20th day of September, 1917, at 10 o'clock a. m., at Austin, Texas," were, by appellants, sent by mail to the Attorney General of the United States and to the Interstate Commerce Commission on September 6, 1917. (Record, p. 567.) In response to this notice Hon. Albert L. Hopkins, attorney, representing the Interstate Commerce Commission, was present at Austin at the hearing. The appellants alleged facts which, if true, clearly fixed venue over the United States in the Western District of Texas. (Record, pp. 218-219, paragraph XXIII; pp. 302-305, paragraph XXV.) In paragraph I of their "Reply and Answer to Plaintiffs' Second Bill of Complaint" appellants suggested the necessity for the convention of a bench of three judges as provided for in Section 266 of the Judicial Code and by 38 Stat. at L. 219 (Record, pp. 37-38); in response to this suggestion two other judges were called in and acted with Judge Batts upon the hearing. (Record, pp. 60, 58.)

III.

THE COURT AND JUDGES THEREOF ERRED IN GRANTING THE INTERLOCUTORY INJUNCTION AS PRAYED FOR BY PLAINTIFFS, AND AS GRANTED, BECAUSE THE ORDER OF THE INTERSTATE COMMERCE COMMISSION, OF DATE JULY 7, 1916, AS CONSTRUED BY THE COURT AND JUDGES THEREOF, AND AS ENFORCED BY SAID ORDER, AND OTHERWISE, WAS AND IS VOID, BECAUSE THE SAME CONTRAVENES THAT PORTION OF SECTION 1 OF THE ACT TO REGULATE COMMERCE WHEREIN IT IS PROVIDED: "THAT THE PROVISIONS OF THIS ACT SHAL NOT APPLY TO THE TRANSPORTATION OF * * * PROPERTY, OR TO THE RECEIVING, DELIVERING, STORAGE, OR HANDLING OF PROPERTY, WHOLLY WITHIN ONE STATE OR TERRITORY, AS AFORESAID." (RECORD, P. 571.)

IV.

THE COURT AND THE JUDGES THEREOF ERRED IN GRANTING PLAINTIFFS THE INTERLOCUTORY INJUNCTION AS PRAYED FOR BY THEM AND AS GRANTED, BECAUSE THE ORDER OF THE INTERSTATE COMMERCE COMMISSION, OF DATE JULY 7, 1916, UPON WHICH PLAINTIFFS' PRAYER WAS BASED, IS VOID AND UNENFORCIBLE BECAUSE THE SAME IS TOO INDEFINITE AS TO THE POINTS OR TERRITORY TO WHICH IT MIGHT LAWFULLY APPLY, AND BECAUSE THE SAME DOES NOT IN ANY WAY, DIRECTLY OR INDIRECTLY OR BY REFERENCE, DEFINE THE TERRITORY IN TEXAS COMMERCIALLY TRIBUTARY TO SHREVEPORT, LOUISIANA, OR THE POINTS OR TERRITORY WITHIN TEXAS IN OR WITH RESPECT

TO WHICH THERE IS COMPETITION BETWEEN THE SHIPPERS OF SHREVEPORT, LOUISIANA, AND THE SHIPPERS OF ANY TEXAS POINT, OR IN OR WITH RESPECT TO WHICH THERE WAS, IS, OR CAN BE, ANY UNDUE DISCRIMINATION AGAINST SHREVEPORT, LOUISIANA, OR THE SHIPPERS THEREOF, BY REASON OF THE RELATION OF STATE AND INTERSTATE RATES. (RECORD, P. 572.)

The order of the Commission involved in this case is radically different from the order passed upon in the Shreveport case (234 U. S., 342), and from the order considered in the South Dakota Express case (244 U. S., 617). The order before the court in the Shreveport case, supra, was confined, territorially, to a small strip of territory in Eastern Texas,—territory which might, with some reason, be said to be "commercially tributary" to Shreveport,—and as to it no question was made about it being, in fact "competitive territory." The order construed by the court in the South Dakota Express case, supra, likewise was limited in its operation to "competitive" territory "in the southeastern part of South Dakota," and the report of the Commission in that case made "it clear that the order applied only to such competitive territory." But the order now before the court,—at least as construed by the carriers,—has no such limitations; it is made to apply to all movements (of classes and the commodities named) within and throughout the more than 260,000 square miles of territory in Texas, except a limited movement along the Gulf of Mexico. Yaleta, Texas, and Belen, Texas, are each about 850 miles west of Shreveport; the order as construed and applied by the carrier controls and fixes the rate on a shipment of a yard of sand between Yaleta and Belen; it also fixes the rate on a carload of household goods belonging to a person emigrating from Yaleta to Belen, although the representatives of Shreveport specifically testified that Shreveport would not at all be interested in such a movement, and that the Shreveport shippers would not care a whit about what rate

was applied thereon. These are not at all extreme illustrations of the scope of the order as construed and applied. Of course, no honest man with an intelligence as much as one-millionth of one degree removed from idiocy would say that a movement of a yard of sand or a carload of household goods from Ysleta to Belen would or could be in any sense competitive with a movement of a yard of sand or a carload of household goods for a comparable distance to or from Shreveport. Nor could any sensible and honest man be found who would say that Shreveport is or could be in competition with the keeper of a store at Belen for the trade of the territoy immediately surrounding Belen. That all of the vast territory of Texas is "commercially tributary" to Shreveport, with respect to any or all of the thousands of articles upon which rates, State and interstate, are fixed through the carriers' construction of the order, is simply unbelievable. To ask a man to believe that all of this territory, with respect to all of such articles, is "competitive" as between Shreveport and all Texas localities is to assume either that he is a consummate knave or hopelessly a fool. Of course, the Interstate Commerce Commission did not believe any such "rot." It seems to us that a very definite statement from it to that effect would be necessary before it could be charged that the Commission did hold any such belief; we do not believe the intelligence of its members ought to be maligned by saying that it did believe all of this territory was "commercially tributary" to Shreveport in the absence of a direct and positive statement from them that they did have such belief. No such statement,—or finding,—can be found in the report or order. The nearest thing to it to be found in the report is a statement by the man who wrote the report, to the effect that "during the last two years *one dealer* has made shipments from Shreveport of *most* of the manufactured articles named (that is, glass bottles, window glass, tight wooden barrels, saddlery and harness,—parenthesis ours) to *many* of these cities and towns in Western Texas, and other dealers at Shreveport have received shipments of cabbage, onions, potatoes, watermelons, wheat, oats, wool

and peanuts from the Western Texas points." (See page 90 of the report.) If the record now before the Commission were before the court it would plainly appear that this statement is substantially untrue, but even if it were true it would be far from showing that all of the 200,000 square miles of territory included in what the Commission calls "Western Texas" is commercially tributary to Shreveport with respect even to "glass bottles," "window glass," "tight wooden barrels," "saddlery and harness," "onions," "cabbage," "potatoes," "watermelons," "wheat," "oats," "peanuts" and "wool," and certainly it would not even tend to prove that such territory is "commercially tributary" to Shreveport with respect to sand, gravel, brick, and the thousands of other articles upon which rates have been fixed in purported compliance with the order. If there had been any evidence of any substantial movement of traffic, or any reasonable likelihood thereof, between Shreveport and all this territory, the Commission no doubt would have pointed it out; this conclusion, we think, is impelled by the fact that the only data furnished by the report, in this respect, is the extremely meager and shadowy statement quoted above. Counsel for appellees, of course, will call attention to the following statement on page 118 of the report, under the title "Undue Prejudice to Shreveport": "There is no doubt concerning the disparity that exists between the class rates and rates on most commodities from Shreveport to destination in Texas as compared with rates from Texas points to the same destinations for like distances. It is equally clear that the commodity rates from Texas points to Shreveport are materially higher than the rates to points in Texas for like distances. This rate relationship prevents the free and normal movment of traffic from and to Shreveport, and to that extent is unduly prejudicial to that locality." A mere difference in rates has never, by the courts or the Commission, been held to present an "unjust discrimination" (Chicago & Great Western Ry. Co. vs. I. C. C., 209 U. S., 108; Texarkana Freight Bureau vs. St. L., I. M. & S. Ry. Co., 43 I. C. C., —); so, therefore, no showing of "undue prejudice" was

made by merely stating that the interstate rates to all Texas points were higher than the State rates; and so the first two sentences of the statement last quoted throw no light upon what territory, if any, in Texas is "commercially tributary" to Shreveport. Nor does the last sentence in the statement do so, for all it means, if true, is that the "rate relationship prevents the free and normal movement of traffic" between Shreveport and *whatever territory in Texas may be commercially tributary thereunto;* this neither defines the "competitive territory" nor shows that *all* of Texas is such. Counsel will also, without doubt, dwell upon the following statement to be found on page 121 of the report, towit: "It may be regarded as established beyond any possibility of doubt that the present relationship of rates and the difference in classification has been and is unduly prejudicial to Shreveport and operates to unduly restrict the trade and commerce of that city." But this statement does not throw any light upon the question of the locality of whatever territory in Texas may be "commercially tributary"; if true, all that it means is that Shreveport's trade, *wherever* it may be located, is "unduly restricted." We submit that nothing can be found in the report or order which constitutes a finding that all of Texas is "commercially tributary" to Shreveport, and, upon the authority of the South Dakota Express case, we assert that before an order can operate to supersede State-made rates it must be definite as to "competitive territory" to which it may properly apply. There are various matters shown by the report which, we think, clearly show that the Commission did not undertake to make the order operate throughout Texas because of the idea that all of Texas was "commercially tributary" to Shreveport; these matters will be discussed at some length hereinafter, but it is well, here, to call attention to them. That the supposed inadequacy of the State-made rates was given prime consideration by the Commission, and that its conclusion with respect thereunto had a powerful influence in the extension of the order to practically all of Texas, is, we think, unquestionably shown by the portions of the report contained on

pages 90-95, 100-107, and Appendices B and C, thereof; these matters, we say, the Commission had no right to consider in determining the issue of "discrimination," and in determining the territorial limitations of its order. (Minnesota Rate Cases, 230 U. S., 352; American Express Co. vs. Caldwell, 244 U. S., 617.) Another matter which the Commission considered, as shown by pages 120-121 of the report, and which, it seems clear, influenced the extension of the order to practically all of Texas, was the idea of remedying and preventing discrimination *as between various localities within Texas* (and not against Shreveport) with respect to intrastate commerce; that it had no right to consider such matters upon the complaint of Shreveport is made clear by the opinion of this court in Philadelphia & Reading Ry. Co. vs. U. S., 240 U. S., 334; and that it had no authority over the question at all appears from the Act to Regulate Commerce wherein its jurisdiction is expressly, both affirmatively and negatively, restricted to the matter of discrimination *against interstate commerce*. Since it is apparent that the matter of the adequacy, vel non, of the State rates, and the matter of intrastate discrimination, had a material influence in the decision of the case and the decision of the question of the territorial operation of the order, and since it is, manifestly, impossible to define the territory over which it would have been made to operate but for the improper consideration of these questions, we take the position that the Commission thereby committed such errors of law as to render the entire order void. Southern Pacific Co. vs. I. C. C., 219 U. S., 433, 449; I. C. C. vs. U. P. Ry. Co., 222 U. S., 541, 555; I. C. C. vs. Illinois Central Ry. Co., 215 U. S., 452, 470; I. C. C. vs. C., R. I. & P. Ry. Co., 218 U. S., 88, 102. As stated, these things will be presented at more length hereinafter; they are mentioned here to emphasize the proposition that the order clearly was not made to extend as far as it purported to do because of any finding or theory that all of the territory embraced is "commercially tributary" to Shreveport. We recognize the fact, of course, that in so far as this particular proceeding is concerned the errors must appear in the fact of the

report or order; but that they do so appear, we think, is manifest. We deem it proper, however, by way of argument to call attention to certain matters in the Commission's record which clearly show that the Commission itself recognized the weight of the influence of the matters here mentioned and recognized that the order was not made to extend to all of this territory, and with respect to all of the articles dealt with, because the territory was thought to be "competitive." The "supplemental order" dealt with in 34 I. C. C., 472 et seq., applied only to the territory there defined as "Eastern Texas," comprising about 60,000 square miles; When the carriers had prepared tariffs in supposed compliance with that order they had "an informal" conference with the Commission with respect to the intended effect and operation of the order. What took place at the conference is thus described by Mr. Gentry Waldo, a representative of the carriers:

"Mr. Garwood: Did you thereafter take up the matter with the Interstate Commerce Commission?"

"Mr. Waldo: Yes, sir. We did. We asked for an appointment with the Commission for a committee that would call on them and explain our difficultes and ask them whether or not we were correctly construing the order. They granted us a conference, and two of us went down to Washington and explained very fully to them what we proposed to do. They told us after considering and hearing all of our statements that they understood this was merely an informal conference. * * * They told us in substance that they did not see how we could more properly comply with this; *that there might be situations arise in the future where our construction would apply where there might be no discrimination that Shreveport could possibly show, but that such difficulties would have to be ironed out as we came to them; that it would be impossible to straigten out a situation of such great extent without taking each instance as it came up and treating it separately.*" (Testimony, Houston hearing, December, 1915, pp. 805-806.)

As stated, this conference with reference to the operation of an

order which purported to apply only to that portion of Texas east of the line of the Gulf, Colorado & Santa Fe Railway from Gainesville, Texas, to Fort Worth east of the line of the M., K. & T. Ry. from Fort Worth to Waco, Texas, and thence east of the Brazos river from Waco to the Gulf of Mexico, which, obviously, was a very small proportion of the territory of Texas. If, with an order so limited, the Commission intended for the carriers to assume the burden of determining where "discrimination" existed by "treating each instance separately," it is certain that it had such intention with reference to the present order which purports to operate throughout Texas. The existence of this intention is further demonstrated by the unquestioned fact that in one instance, at least, the representatives of Shreveport expressly disclaimed any interest in what rates should be made to apply to movements within the State, and by the further fact that, in this instance, the order purports to control, and as applied by the carriers, does control the rates on such intrastate movements.

The proceedings last referred to indicate that when this order was made the Commission was laboring under a misconception of its powers; they indicate that it was the intention of the Commission to have the order, prima facie, apply to all the territory in Texas (except the strip along the Gulf of Mexico) with respect to all the various articles covered thereby and that the carriers, when they actually came to apply it, should assume the burden of determining the points to and from which rates must be changed in order to effect a removal of such discrimination as existed. This intention, at least, would have to be assumed in order to avoid convicting the Commission of deliberately proceeding beyond its powers and finding discrimination where, manifestly, it could not exist. That such action by the Commission would be proper in another kind of a case, and that it was not proper in this case, is clearly stated by Mr. Justice Brandeis in American Express Co. vs. Caldwell, 244 U. S., 617, where it is said:

"Where a proceeding to remove unjust discrimination presents solely the question whether the carrier has improperly exercised

its authority to initiate rates, the Commission may legally order, in general terms, the removal of the discrimination shown, leaving upon the carrier the burden of determining also the points to and from which rates must be changed, in order to effect a removal of the discrimination. But where, as here, there is a conflict between the Federal and the State authorities, the Commission's order cannot serve as a justification for disregarding a regulation or order issued under State authority, unless and except so far as it is definite as to the territory or points to which it applies."

And in a case of the kind last mentioned, the opinion in the Express case clearly indicates that the order may be availed of to justify superseding State rates only where the order covers territory which is actually "competitive," or "commercially tributary" to the complaining locality. We say "actually competitive" because, manifestly, it was never the thought of Congress that a mere difference in rates constituted an "undue" or "unjust" discrimination; unless the rates are used by a locality, its interest in the rate disparity is purely abstract. (C. & G. W. Ry. Co. vs. United States, 209 U. S., 108.) The order before the court in the Express case was sustained because it was found to be *definite as to what territory was actually competitive* and because there was, therefore, a basis for limiting the general terms to an application which would be lawful. In that order language was used which was susceptible of the construction that it applied to all shipments between the five cities named and *all* other points in the State; but the actually "competitive territory" was defined, and the general language was made to yield to this limitation. A wholly different situation is presented in the case at bar; the order contains language susceptible of the construction that it is to control all shipment between *all* points within the State, but it is wholly lacking in data as to what is the "competitive territory,"—the territory in which there could be an actual "existing discrimination" against the particular interstate traffic in question. So that the very things which saved, and rendered valid, the order in the Express case are absent from the order now in question;

it does not furnish "the necessary data for adjusting the rates in controversy." The situation is this: The Commission has not said, and could not with any show of plausibility say, that all of Texas is "commercially tributary" to Shreveport. Reason would indicate that but a small portion, if any, of it is such; we know that all of it not such,—certainly with respect to all of the thousands of articles upon which State rates are fixed in purported compliance with the order; but we have nothing by which we can define the "competitive" and the "non-competitive," and because of this, we say that the order is wholly and fatally defective for indefiniteness.

Counsel for appellees may say that if we thought the order lacked definiteness it was our duty to apply to the Commission "for further specifications." But this was, substantially, done (Record, pp. 391, 392, 393), and relief was refused. (Record, pp. 94-95.)

Because of these things it must become manifest that the order, as construed and applied, plainly violates the provision of Section 1 of the Act to Regulate Commerce wherein it is provided "That the provisions of this act shall not apply to the transportation of * * * property, or to the receiving, delivering, storage, or handling of property, wholly within one State or Territory, as aforesaid." This is true because in so far as the order controls rates on any article not "competitive" or within any territory not "commercially tributary" to Shreveport it regulates "transportation," etc., of property "wholly within one State,"—it regulates intrastate rates as such. For, within territory which is "non-competitive," the intrastate rate does not "affect" interstate commerce; this, we think, is clearly to be implied from the opinions in the original Shreveport case, supra, and the Express case, supra.

Still, even if we are in error as to the nature and effect of the order as discussed above, the question is presented here, for the first time, as to whether or not the Commission may, in view of the proviso of Section 1 of the Act, legally make an order in terms applying to commerce throughout an entire State upon a

finding of a mere disparity in rates; that is to say, whether or not the proviso in fact contains any limitation whatever upon Section 3. For as a practical matter, no State can be found where the State and interstate rates are exactly equal, and if because of the existence of this fact such an order can be made to operate co-extensive with the limits of a State, clearly the proviso, in its application to Section 3, is meaningless,—mere surplusage. That Congress had no idea that a mere rate disparity involved unlawful or improper discrimination is shown, affirmatively and negatively, by the terminology of the act. The Commission is given no jurisdiction over "discrimination"; it is given authority over "undue" or "unjust" discrimination. A rate disparity in a locality where a particular community, or person, does not do business is, as to that community or person, a mere abstraction; no injury has been done it or him. (C. & G. W. Ry. Co. vs. I. C. C., 209 U. S., 108.) If Congress had the intention of requiring a rate parity, it no doubt would have simply provided that State rates should not be lower than comparable interstate rates, and thereby have saved the vast expense and trouble of the administration of Section 3 through the Commission. When it provided for the existence of an "undue discrimination,"—instead of simply "discrimination,"—as a condition precedent to the power of the Commission to affect intrastate rates, it surely meant that a person or locality could not complain, or sustain its complaint, of discrimination unless it was substantially interested in the matter and that before it had such interest it must have occasion to use the unequal rate. When Shreveport, therefore, complained, if it did complain, of rates in a territory in which it did no business, and the Commission, as to such territory, acted favorably upon the complaint, and if such action is to be taken as authority to disregard the State-made rates in that territory, the act has clearly been so administered as to control intrastate rates "as such" and not "as affecting interstate commerce." It must be admitted that Congress intended that the proviso of Section 1 should have some limitation upon Section 3, because this is the express declaration

thereof. And the fact that this court has held (in the Shreveport case and in the Express case, supra) that the proviso did not limit Section 3 as administered in the orders before the court in those cases does not at all detract from the force of the proposition that the proviso has been violated in the order now before the court because, in those cases the orders expressly applied, or were held to apply, only to a limited territory which territory was expressly found by the Commission to be actually "competitive" and which finding was not at all challenged in the proceedings before the courts. No such condition is now up for consideration. Here the order is made to apply practically to an entire State, without a finding, a specific finding, at least,—that the entire territory is "competitive," and with a report which clearly indicates that it was given such wide territorial application because of reasons other than the existence of "unjust discrimination" against Shreveport. We submit that the order, when considered in the light of the report, constitutes a manifest effort to control rates "wholly within a State" in violation of the proviso of Section 1 of the act.

We submit the further proposition that the order, because of its State-wide application violates said proviso, regardless of the real nature of the findings and conclusions of the Commission, because it renders the proviso entirely meaningless in the face of the plain declaration of the statute that it qualifies the "act," including Section 3 and every other section thereof.

V.

THE COURT AND THE JUDGES THEREOF ERRED IN GRANTING THE INTERLOCUTORY INJUNCTION AS PRAYED BY PLAINTIFFS, AND AS GRANTED, BECAUSE THE ORDER OF THE INTERSTATE COMMERCE COMMISSION, OF DATE JULY 7, 1916, UPON WHICH PLAINTIFFS' CLAIM FOR RELIEF WAS BASED, WAS, AND IS, VOID IN WHOLE OR IN PART BECAUSE, AS AFFIRMATIVELY APPEARS ON PAGES 91 TO 95 AND PAGES 100 TO 107 AND

APPENDIX C, AND OTHER PORTIONS OF THE REPORT ACCOMPANYING SAID ORDER, THE INTERSTATE COMMERCE COMMISSION IN UNDERTAKING TO PRESCRIBE AND AUTHORIZE,—IF IT DID SO BY SAID ORDER,—RATES AND REGULATIONS AS APPLICABLE TO INTRASTE SHIPMENTS IN EXCESS OF THOSE THEREFOR PRESCRIBED BY THE RAILROAD COMMISSION OF TEXAS AND ESPECIALLY THE DIFFERENTIAL RATES INVOLVED, WAS SEEKING TO INCREASE THE REVENUES OF THE CARRIERS, TO CONDEMN SUCH INTRASTATE RATE AS BEING INADEQUATE, AND TO SUBSTITUTE FOR SUCH STATE RATES, RATES WHICH IT THOUGHT TO BE ADEQUATE,—AND THEREBY SAID COMMISSION COMMITTED AN ERROR OF LAW AND EXCEEDED ITS LAWFUL AUTHORITY TO SUCH AN EXTENT AS TO RENDER SAID ORDER VOID AND UNENFORCIBLE. IN THIS CONNECTION APPELLANTS SAY THAT THE INTERSTATE COMMERCE COMMISSION HAD NO LAWFUL AUTHORITY TO INQUIRE INTO OR PASS UPON THE QUESTION OF UNREASONABLENESS OF SUCH RATES, BUT THAT ITS LAWFUL JURISDICTION WAS LIMITED TO THE EXISTENCE AND REMOVAL OF ACTUAL AND UNDUE DISCRIMINATION AGAINST INTERSTATE COMMERCE. (RECORD, PP. 572-573.)

The order was entered before the decision by this court of the South Dakota Express case. In view of the fact that the Commerce Court, in the original Shreveport case, 205 Fed., 380, had found that the State rates there involved were in and of themselves unreasonable and therefore void before holding that the order of the Commission authorized the carriers to disregard them, and in view of the fact that the trial in the Commerce Court was de novo and, consequently, that its findings of fact were supposed

to furnish the predicate for the decision of the Supreme Court, the Commission, desiring, as we are convinced by the report it did desire, to relieve the railroads of what it thought was inadequate State rates,—probably thought that it was necessary for it to consider and pass upon their intrinsic reasonableness, vel non. As we construe the opinion in the Express case, supra, the Commission had no proper concern with this question, because, under that opinion, it is wholly immaterial that the State rates might themselves be reasonable. That opinion also makes it clear that, in a case of this character, the action of the Commission can be made to affect State-made rates *only* because of unjust discrimination and only to the extent, territorially and otherwise, that unjust discrimination against interstate commerce actually exists. The report is replete with statements showing the intention and desire of the Commission to grant the railroads general relief against the Texas rates, and that its desire was not alone to relieve the Shreveport-Texas traffic of such discrimination as may have existed against it. This desire, we think, is shown both negatively and affirmatively by the report.

Attention has been called heretofore to the extreme meagerness and generality of the Commission's discussion of the facts supposed to indicate the existence of unjust discrimination against Shreveport throughout the State of Texas. This of itself, when viewed in the light of the extremely broad territorial operation of the order, and its tremendous effects upon the commerce of the State, would indicate that something more than the idea of discrimination against the small volume of Shreveport's traffic was in the mind of the Commission.

But we are not left to reasoning upon the subject. As shown on page 86 of the report, the Commission received in evidence the evidence "submitted during the years 1914 and 1915 in a proceeding before the Texas Commission," which evidence was submitted to the Texas Commission "on an application by the Texas railroads for authority to increase their rates for transportation within the State of Texas." (Page 87.) As is fairly indicated

by the report, this evidence included many thousands of pages of testimony and exhibits, all bearing directly and solely upon the question of the reasonableness of the Texas intrastate rates. The report says that this evidence was stipulated into this record, but the record itself shows that it was received over the protest of some of the parties. But, having been received, must we not assume that the Commission considered it, and, having considered it, that it had its influence in the making of the order? What bearing, it may well be asked, did it have on the question of "unjust discrimination" against Shreveport, Louisiana, since it was directed wholly at showing the unreasonableness of the intrastate rates? Since such was its nature, its mere admission into the record would imply its consideration and its influence upon the result.

But we are not left to conjecture as to its consideration or as to its influence. Pages 90-95, 100-107, and Appendices B and C, of the report affirmatively show that it was given great consideration,—perhaps more so than all other evidence in the record. These portions of the report also make it clear that the evidence was considered alone upon the question of the reasonableness of State rates. For instance, the "station costs" data discussed on pages 90-95 was data pertaining alone to station costs at a few stations within the State, and there is no indication or proof that this data throws any light upon the station costs at Shreveport.

Again, on page 93, etc., it is shown that "the carriers propose that the Shreveport scale (that is, the scale established in 34 I. C. C., 472) be modified by making the minimum rates which would be applicable for distances of 10 miles or less, as follows:

Class:	1	2	3	4
Cents....	24	22	18	16"

The rates prescribed in the order for distances of 10 miles or less are as follows:

Class:	1	2	3	4
Cents....	23	19	16	14

which was a very substantial increase over the Texas Commission's rates for like distances. The report and order also prescribes increased rates for distances between 10 miles and 20 miles. We say that the prescription of rates for 20 miles and less conclusively evidences the intention of the Commission to prescribe intrastate rates as such for the simple reason *that Shreveport, La., is situated more than twenty miles from the nearest point on the Louisiana-Texas State line* (this fact being well known to the Commission), *and, therefore, these short distance rates could not possibly have been intended for interstate application because the Commission knew that there could never be an interstate shipment to which they could apply.* This feature of the order will be more fully discussed in another connection; we submit it here as conclusive of the intention to control intrastate rates "as such." What other reason could there be for prescribing them?

On page 94 of the report it is said: "While all the evidence with reference to the station costs was submitted to the Texas Commission, the carriers did not at that time propose a definite scale of rates based upon these figures. This scale was proposed at the hearing before us in December, 1915, and met with considerable objection and criticism from some of the protestants, who also asserted that the computations concerning these station costs were erroneous in certain particulars. It does not appear, however, that the errors pointed out in the computations lead to any serious errors in the results. While we are not disposed to accept all of the claims of the carriers with reference to these station costs, for the reason, among others, that the computation made as to freight stations examined may not represent the average station costs throughout the State of Texas, due consideration must be given to the data submitted. This data, mind you, was confined to station costs within the State and compiled in an effort to show the intrastate rates to be too low; upon it the carriers "proposed" a scale of rates based thereon which they had omitted to propose to the Texas Commission; "due consideration" was given the data, and thereupon the Commission prescribed a scale

of rates substantially comparable to that "proposed" by the carriers and greatly in excess of those established by the Railroad Commission, including rates for distances of twenty miles or less. Can any reasonable man read this statement and escape the conclusion that the granting of higher intrastate rates to the carriers was one of the main, if not the leading, purposes of the Commission? If so, ample indicia of the purpose remains.

On page 99 of the report, with respect to rates on "cotton seed and products," it is said: "The rates *proposed* by the carriers for *application in Texas* and between Shreveport and Texas points correspond closely with the rates on cotton seed cake and meal and cotton seed hulls from Oklahoma points to points in Texas, discussed in 'cottonseed to Texas,' 25 I. C. C., 237." The rates referred to in the statement were "proposed" by the carriers before the Interstate Commerce Commission in this case at the same time that they "proposed" the "class rates" as mentioned on page 94 of the report. The rates thus proposed on "cottonseed" were: 10 cents for 100 miles, 14 cents for 200 miles, and 18 cents for 300 miles, etc. (Page 98.) The rates prescribed by the order on "cottonseed" were: 10 cents for 100 miles, 15 cents for 200 miles, and 18 cents for 300 miles, etc. (Page "X" of the order.) The rates thus "proposed" on "cottonseed hulls" were: 7½ cents for 100 miles, 10 cents for 200 miles, 13 cents for 350 miles and over, etc. (Page 98.) The rates prescribed were: 7½ cents for 100 miles, 10 cents for 200 miles, and 13 cents for 341 miles and over. (Page "X" of the order.)

On page 99 of the report, the Commission has this to say with respect to rates on peanuts, flour, wheat, corn, hay and analogous articles:

"The present rates in Texas, which have been authorized by the Texas Commission in response to petition of the carriers, reach maxima at 200 miles of 15 cents on corn, 17½ cents on wheat and hay, 20 cents on flour. The rates on wheat also apply on peanuts, unshelled, and on a large variety of seeds, including alfalfa, clover, flag, grass, hemp, millet and sorghum. *The car-*

riers urge in support of their application for increased rates on these articles that grain is often hauled distances in excess of 500 miles for the maximum rate which the Texas Commission has authorized for 200 miles or more; and that a large percentage of the traffic is interline and the revenue must be divided between two or more lines. Many comparisons are instituted between the rates in Texas and the rates from and to other territories. For example, it is stated that the rates from Oklahoma producing points to Fort Worth, a distance of approximately 200 miles, are as follows: Flour 30½ cents, wheat 25½ cents, corn 21½ cents, as compared with the rates proposed by the carriers for like hauls in Texas of 18½ cents on flour, 16 cents on wheat, 13 cents on corn. From Oklahoma producing points to Houston, a distance of about 450 miles, the rates are: Flour 38½ cents, wheat 33½ cents, corn 29 cents, while the rates proposed for like distances in Texas are: Flour 22½ cents, wheat 20 cents, and corn 17½ cents. From Kansas producing territory to Northern Texas, a distance of about 300 miles, rates are: Flour 34½ cents, wheat 29½ cents, corn 26½ cents, while the proposed Texas rates are: Flour 21 cents, wheat 18½ cents, and corn 15½ cents. *It is contended that the rates on unshelled peanuts should be higher than on wheat because of lighter loading.*" (Report, p. 99.) (Italics ours.)

The carriers' proposed rates on these articles before the Interstate Commerce Commission at the same time that they proposed the class rates, as shown on page 94 of the report. In response thereto, the order prescribes rates on these articles, reaching maxima at 200 miles, as follows:

"Corn, 17 cents; wheat and hay, 19 cents; flour, 22 cents." (Paragraph XII.)

On pages 100 to 107 the Commission, at length, discusses the "*Financial and Physical Condition of Carriers.*" This discussion, manifestly, is based almost entirely upon the evidence introduced before the Texas Commission in an effort of the carriers to show that the Texas Commission rates were too low. The evidence here

discussed is set forth in more detail in Appendices B and C of the report. It is apparent, at a glance, that this evidence could not possibly throw any light upon the issue of discrimination as against the Shreveport-Texas traffic, nor could it possibly elucidate the question of the reasonableness or unreasonableness of the rates applicable to that particular traffic. It has to do entirely with a wholly different traffic, and here it may be stated that one of the very remarkable characteristics of this case is to be found in the fact that at no time did the complainants or the carriers introduce a scintilla of evidence tending to show the volume of the Shreveport-Texas traffic, the location thereof, or the reasonableness, or unreasonableness, of the rates applicable thereto in and of themselves. Since the great bulk of evidence considered by the Commission, as shown in these portions of the report, had to do alone with the question of the adequacy of the State-made rates, it would be difficult to escape the conclusion that one of the reasons actuating the Commission in so elaborately considering this evidence, and in making the order in the form in which it was made, was a desire to grant the railroads a general increase in their intrastate rates. The existence of this desire would appear to be conclusively established by the further fact that the order, as interpreted and applied by the carriers, undoubtedly has this result; so clearly is this fact established that the appellees, in their original bill of complaint in equity No. 295, allege under oath:

"That *the rates found in said order* of Interstate Commerce Commission of July 7, 1916, on the classes and various commodities therein named to be reasonable rates to be charged on shipments moving between Shreveport and points in the State of Texas, while for some distances the same, and in a few instances lower, than rates applicable to such shipments between points in the State of Texas prescribed by the Texas Railroad Commission, *are on an average or taken as a whole, very materially higher than the corresponding rates prescribed by the Texas Railroad Commission, and will if applied, as permitted by said report and order of the Interstate Commerce Commission, to shipments moving be-*

tween points in the State of Texas, yield in revenue to plaintiffs several million dollars per annum more than they would, or could earn under the application to the same business or shipments of the rates prescribed by the Railroad Commission of Texas; that the adoption as required by said order of the Interstate Commerce Commission of Western Classification in lieu of the Texas Classification for shipments between points in the State of Texas will also increase the annual earnings of plaintiffs very materially over what they otherwise would be. That the rates so found and prescribed by the Interstate Commerce Commission were expressly found by it to be just and reasonable rates for application to shipments between Shreveport and points in the State of Texas; that the necessary effect of said finding is to adjudicate that the corresponding rates established by the Railroad Commission of Texas, where they differed from those so found to be just and reasonable by the Interstate Commerce Commission were unjust and unreasonable rates." (Italics ours.) (Record, p. 125.)

Upon a consideration of this evidence (directed alone at the intrastate rates) the Commission reached the conclusion, shown on page 103 of the report, *"that there is something wrong with the Texas Railroads,"* and, manifestly, thereupon the Commission conceived, and acted upon, the idea that it was its function to remedy this general condition of the carriers, instead of limiting its action with respect to the State rates to the issue of discrimination alleged against the Shreveport-Texas traffic. This conception, on the part of the Commission, is carried forward by its discussion of the question of *"Classifications."* There is in the report no finding that the "Western Classification," as a whole, is just and reasonable, nor is there a finding that the Texas Classification, as a whole, or in any substantial part, is unjust or unreasonable. Upon the question of prejudice to Shreveport: The finding is "that the present *difference* in classification has been, now is, and for the future would be undoubtedly prejudicial to Shreveport." (Page 123.) Thereupon the report and order requires the carriers to apply "the provisions of the Western Classification in effect

at the time such transportation takes place." (Page 123.) On page 106 of the report, in the discussion of this subject, the Commission says, "in addition to the above rules there are numerous items wherein the use of the Western Classification *would greatly increase the rates* now governed by the Texas Classification." It might well be asked what relevancy to the issue of discrimination against Shreveport had the proposition that by the substitution of the Western Classification for the Texas on intrastate traffic the revenues of the carriers would be greatly increased? Of course, it has no relevancy to this issue, but, obviously, it had tremendous importance if it was in fact the desire of the Commission to seize the opportunity to bring about a general increase of railroad revenues within the State of Texas. It is our view that, under the Act to Regulate Commerce, it is the duty of the Commission to examine the various provisions of the classifications in a case like this, to condemn the provisions which are unjust or unreasonable or discriminatory and itself to substitute therefor provisions which are just, reasonable and non-discriminatory. This is the plain language of the statute, and it seems clear from the discussion by the Commission itself that if it desired only to prevent discrimination against the particular interstate traffic in question, this would have been done; but instead of doing this, the Commission simply found that the mere *difference* created the prejudice; it found, further, that the use of the Western Classification for intrastate traffic would greatly increase the carriers' revenues; and, with these two facts ascertained, it promptly required the use of the "Western."

Another evidence of the intention of the Commission to grant the carriers a general increase of revenue derivable from intrastate traffic, independent of the issue of unjust discrimination, is conclusively shown, we think, by the following facts of record: The order of the Commission of date January 16, 1912, set out on pages 362-363 (litigated in the original Shreveport case, supra) prescribed maximum class rates, etc., for application on the line of the Texas & Pacific Railway from orphans' home (near Dallas)

eastward to Shreveport, and on the line of the Houston East & West Texas Railway between Houston, Texas, and Shreveport, and intermediate points, substantially equal to the rates prescribed by the Railroad Commission of Texas for intrastate application for equal distances; after the decision in the original Shreveport case these carriers established such rates on such lines, and the Missouri, Kansas & Texas Railway Company of Texas likewise established like rates applicable to points on its line from Greenville, Texas, eastward to Shreveport. (Record, pp. 310-312.) These rates on these three lines were in force at the time of the entry of the order of July 7, 1916, and remained in effect until superseded by Texas Lines Tariff 2-B on November 1, 1916. (Record, p. —.) As to all movements between Shreveport and these points, therefore, there could be no complaint of unjust discrimination, for the simple reason that the rates, State and interstate, were equal. A glance at a railroad map will show that, logically, these movements comprised a large proportion of the entire Shreveport-Texas traffic; as a matter of fact they comprised more than three-fifths of the total; and this was substantially all that Shreveport originally complained of. In addition, there were a large number of instances where the interstate rates applicable between Shreveport and Texas points were equal to, or lower than, the Texas Commission's intrastate rates for equal distances; for instance: On Beef cattle, the rates from Shreveport to all points on the Texas & Pacific Railway in Texas were substantially lower, mileage considered, than the Texas rates, and the same was true of the Shreveport interstate rates on beef cattle to points on some other lines; the Shreveport interstate rates on "corn and other articles taking same rates" for considerable distances were equal to or lower than the Texas rates (Report, p. 134); the Shreveport interstate rates on "fire brick, etc.," for all distances in excess of 700 miles were lower than the Texas rates for comparable distances. (Report, p. 135.) As stated, many other such instances existed, but these are believed to be sufficient to illustrate the point. In all such instances materially higher rates are prescribed

in the order. And in all such instances, of course, there could have been no idea that there existed unjust discrimination against Shreveport. It must follow, therefore, that the new rates were not prescribed in order to prevent undue discrimination against Shreveport; the only reason why they were prescribed was the desire of the Commission to give the carriers more revenue. In many other instances there had never been established interstate rates for application between Shreveport and Texas points for the simple reason, of course, that there had never been an occasion to do so because nobody at Shreveport had ever had any use therefor. And in such instances, as clearly stated in St. L., I. M. & S. Ry. Co. vs. United States, 217 Fed., 80 (see, also, P. & R. Ry. Co. vs. United States, 240 U. S., 334), the carriers had not unjustly discriminated against Shreveport. (This was not a proceeding to establish through routes.) Instances of this are: On all articles for distances of 20 miles or less, it being impossible for there to be an interstate shipment for that distance; there was no carload rate on "dry goods" between Shreveport and Texas. (Report, p. 100.) Other instances might be cited. But in all such cases the order prescribes rates in excess of those prescribed therefor by the Texas Commission. Necessarily, in these instances, rates were not prescribed to prevent discrimination; necessarily, since there had never been any occasion for the establishment of such interstate rates, the only possible reason for the prescription thereof was to supersede the Texas rates and thereby give the carriers more revenue from their intrastate business.

In the complaints filed by the Railroad Commission of Louisiana the commodities with respect to carload rates on which discrimination was alleged were specifically named. Certain of the named commodities were eliminated from consideration during the proceedings as shown on page 95 of the report, and the carload commodity rates left in issue upon the charge of discrimination are specifically named on said page, being forty-four in number. But the Commission did not content itself with prescribing rates on these commodities about which complaint was made, but, as shown

by Appendix A of the report and paragraph VIII of the order, it proceeded to prescribe materially increased rates on a long list of other commodities not at all complained of by Shreveport. It is reasonable to assume that if Shreveport had any traffic in these additional articles complaint would have been made as to them; Shreveport cannot well be charged with excessive modesty in making its claims of discrimination, and yet here is a long list of commodities moving within Texas, but evidently not between Shreveport and Texas, upon which there was no complaint but upon which the Commission gave the carriers higher intrastate rates. What reason can be assigned for this, except the declaration that generally "there is something wrong with the Texas railroads" and the desire of the Commission to give them general relief from Texas rates, regardless of the issue of discrimination against the particular interstate traffic involved?

Upon the issue of reasonableness there were only particular rates, applicable to particular traffic, properly before the Commission, towit: the particular interstate rates complained of as applicable alone to such traffic as there may be between Shreveport, Louisiana and Texas points. These were the rates to which the inquiry as to adequacy should have been directed. These were the only rates with whose reasonableness, vel non, the Commission was properly concerned. (American Express Co. vs. Caldwell, supra.) And yet no evidence was offered with respect to the reasonableness of these particular rates; the report is absolutely silent with reference thereunto. The volume of the business was not even shown approximately or in general terms. There is in the record and the report absolutely nothing from which the Commission, or anybody else, could tell whether the carriers were making a profit, or suffering a loss, from this particular business. As stated before, the great bulk of the evidence considered was evidence introduced before the Texas Commission upon the issue of the reasonableness of the whole body of Texas intrastate rates, and, of course, this evidence had no reference to, and threw no light upon, the adequacy of the Shreveport-Texas rates on the par-

ticular articles in question. (Atlantic Coast Line vs. Florida, 203 U. S., 256, 260.) We insist that it was error for the Commission even to receive this evidence; and certainly it was error for it to give it the controlling consideration which was given it. And that it was given controlling weight cannot well be doubted in view of what is said in the report. But whether it was controlling or not, there can be no doubt that it had great influence with the Commission and contributed largely to the result of the decision as embodied in the order. It being clear that it had some material weight in the result, and since its influence must have permeated the entire action, it would seem clear that it vitiates the entire order. It cannot be said that the Commission, although receiving the evidence, did not consider it, or, having considered it, rejected it as immaterial, because the plain declaration of the report itself is to the contrary. It had its effect in causing the order in the form in which we find it; there is nothing to warrant the assumption that the order, in this form, would have been made but for this evidence and these considerations, the only reasonable assumption is to the contrary. In fact, the report, on pages 91-95, declares, and the order itself shows, that upon this evidence as to intrastate rates, the Commission granted the railroads substantial relief against the Texas rates, and that, too, in many respects in which Shreveport could not possibly be interested one way or the other.

We submit that the report clearly shows that the Commission, in making the part of the order which was designed to affect the intrastate rates, had, and acted upon, the belief that it had the right to protect the Texas railroads against the supposed inadequacy of the intrastate rates as such, and that it assumed a power which it did not have, just as it erroneously assumed and exercised the power condemned by this court in Southern Pacific Co. vs. I. C. C., 219 U. S., 433, 444, 449. And since the results of this misconception are inextricably intermingled with the results of the use of its proper powers throughout the order the whole, we say, must fall.

VI.

"THE COURT AND THE JUDGES THEREOF ERRED IN GRANTING UNTO THE FORT WORTH & DENVER CITY RAILWAY, ONE OF THE PLAINTIFFS, AN INTERLOCUTORY INJUNCTION AS PRAYED FOR BY SAID COMPANY, AND AS GRANTED TO IT, FOR THE REASON THAT THE REPORT OF THE INTERSTATE COMMERCE COMMISSION, OF DATE JULY 7, 1916, AND ESPECIALLY PAGES 173 AND 174 THEREOF, AFFIRMATIVELY SHOW AND FIND THAT RATES PRESCRIBED BY THE RAILROAD COMMISSION OF TEXAS APPLICABLE TO INTRASTATE SHIPMENTS (AND INTERSTATE SHIPMENTS) ON THE LINES OF SAID COMPANY, AND ESPECIALLY THE DIFFERENTIAL RATES THEREFOR PRESCRIBED ARE ADEQUATE AND REASONABLE AND ARE SUCH AS TO BRING THE SAID COMPANY A REASONABLE RETURN UPON ITS INVESTMENTS, AND BY REASON OF THIS FACT AND FINDING THE INTERSTATE COMMERCE COMMISSION HAD NO LAWFUL AUTHORITY TO AUTHORIZE, AND THEREFORE DID NOT AUTHORIZE SAID COMPANY TO SET ASIDE SUCH STATE RATES AND TO SUBSTITUTE THEREFOR THE HIGH(ER) RATES WHICH IT HAS DONE, AND WILL DO, AND THEREBY IMPOSE UPON THE SHIPPERS UNREASONABLE RATES." (RECORD, P. 573, PARAGRAPH VI.)

Attention has been called to the fact that the bulk of the evidence considered by the Commission upon the question of the reasonableness of the rates involved as well as of the intrastate rates consisted, largely, of a showing of the general financial condition of the carriers, etc., no specific evidence having been offered with respect to the particular interstate rates in question. The

proposition has been advanced by us that upon this evidence,—dealing almost wholly with the results of the intrastate rates,—the Commission reached the general conclusion that "there is something wrong with the Texas railroads," and thereupon conceived it to be its duty to give the carriers general relief against the State rates, all of which, we say, it had no right to do. In this we firmly believe we are correct, but even if we are in error, generally speaking, the fact remains that the Commission had singled out the Fort Worth & Denver City Railway Company, for some reason undisclosed, and given it very substantial relief by way of tremendously increasing both its State and interstate rates in the face of a finding by the Commission that the pre-existing rates used by this company are wholly adequate.

The evidence with respect to this road is fully set forth on pages 173-174 of the report. There the valuations of the road as made by its engineering department, and by the Railroad Commission of Texas, is set forth, as well as its capitalization and "book cost." Its "net income" for a series of years is shown, and thereupon the Commission says:

"The net income before deducting interest for 1915 was sufficient to pay 5.62 per cent on the capitalization, 4.38 per cent on the 'book cost,' 5.42 per cent on the valuation made by its engineering department, and 8.08 per cent on the valuation made by the Texas Commission.

"The net income 'has been sufficient each year to meet all interest obligations and to permit a reasonable return upon the valuation of the property made by the road's engineers.' * * * There is nothing in its present financial condition to indicate that its rates are not fairly remunerative."

This would seem to be all that this road could ask for as a general proposition,—and, as stated and reiterated, no specific evidence was introduced to show that the Shreveport traffic to and from points on its line was profitable or not. But in the face of this condition, as found by the Commission itself, this road was given very materially higher rates, both State and interstate, than

existed before, and, probably, it was given much greater relief than was given any road in Texas. The reason for the favoritism to this road, as stated, is not disclosed. Irrespective of the tremendous increases granted in its "Differential Rates,"—presently to be discussed,—it was granted very material increases in its base rates, State and interstate.

Its line, as shown on page 173 of the report, extends from a point near the northwestern corner of the State (Texline, on the New Mexico-Texas State line) through Amarillo, Acme, Wichita Falls, to Fort Worth, a distance of 455 miles. As is apparent from a glance at a map, Fort Worth is the nearest point on its line to Shreveport,—222 miles. No shipment, therefore, can move between Shreveport and a point on its line which does move at least 222 miles. For distances of 222 miles and more (for which interstate rates can only apply), the rates prescribed in the order and applied by this road are generally much higher than even the old interstate rates complained of by Shreveport and found on page 108 of the report to be unreasonably high. A comparison of the class rates between Shreveport and representative points on this line, as complained of by Shreveport and as prescribed by the Commission, will illustrate the proposition as applicable to distances greater than 222 miles. Evans, Quanah, Acme and Agatite are stations on said line 402, 408, 413 and 415 miles, respectively, from Shreveport. In the table next set forth the figures and letters in the first line indicate the classes; the figures in the second line indicate the rates in effect to these stations and complained of by Shreveport prior to the order; the figures in the third line indicate the rates prescribed in the order for these distances and now being applied by this road.

1	2	3	4	5	A	B	C	D	E
105	92	74	71	54	58	51	40	28	21
114	97	80	69	57	59	46	40	34	28

(Record, pp. 525-526.)

The increases are in addition to the interstate differentials al-

lowed, and the increases in such differentials. Of course, as stated, it is apparent that there could never be an interstate shipment between Shreveport and any point on this line which does not move for a greater distance than 222 miles; nevertheless, the order prescribes interstate rates for all distances from 1 mile up. And as to all distances less than 222 miles, of course, the only reason for prescribing interstate rates was to give the road authority to supersede the State rates and thereby increase its revenues. Certainly, this is the effect.

The class rates in effect for distances of 10 miles or less on this road, prior to the effective date of the order, were:

1	2	3	4	5	A	B	C	D	E
13	12	10	8	6	7	6	5	5	4

the rates prescribed by the order for such distances are:

1	2	3	4	5	A	B	C	D	E
23	19	16	14	10	10	8	7	6	5

the rates "proposed" by this road, with the others, for the first four classes were:

1	2	3	4
24	22	18	16

(Report, p. 93.)

The preexisting rates were found to be reasonable by the Interstate Commerce Commission in 34 I. C. C., 472, where a scale of class rates was prescribed which, for distances up to 245 miles, was substantially the same as that of the Railroad Commission of Texas. (Report, p. 90.) The increases in the "base rates" up to 245 miles, while not uniformly as great as that indicated for the first 10 miles, are very substantial, as will appear from a comparison of the scales prescribed in the present order and in 34 I. C. C., 472.

While the record of evidence before the Commission is not now before this court, no one will contend that there was any evidence to show the volume of traffic to or from Shreveport and points on this line; as a matter of fact, it is doubtful if there ever was

a single pound so moving; at all events it must be apparent that the volume was purely negligible. As to this road, at least, the desire of the Commission to increase its revenues cannot be denied; no other explanation can be given for the prescription for this road of the short-distance increased rates; and, this, too, in the face of a specific finding that its pre-existing rates were adequate. The extent of the relief thus given this road against the intrastate rates is indicated by the table shown on page 173 of the report. This table shows the comparative movement, State and interstate, of the "principal commodities" (upon all or nearly all of which increased rates were granted by the order); and shows that during the period considered a total of 2464 carloads, State, and 1871 carloads, interstate, were handled, and, of course, none or practically none of this interstate traffic was affected by the Shreveport-Texas rates.

But when we come to consider the increases brought about by the "Differential Rates," as applied by this road under the purported authority of the order, a result amazing in character will appear. As stated on page 174 of the report the road lies very largely in "Differential Territory." The "Differential Line," as prescribed by the Railroad Commission of Texas, applicable to this road, crossed the road at Amarillo, Texas, 119 miles east of its western terminus. The report and order of the Interstate Commerce Commission first proceeds to locate this line at Acme, Texas, 139 miles east of Amarillo, and, thus, to place 139 miles more of the road in "Differential Territory," and, thus, by this provision alone, as is manifest, to greatly increase its revenues from intrastate traffic. It now has 258 miles in "Differential Territory" upon which it is charging the "Differential Rates" on all shipments regardless of the total distance of the hauls. The increase in revenues from this source alone, of course, cannot be estimated, but, as is apparent, it is very large.

Now, under the Texas Commission's rate system, no "Differential" can be charged unless the shipment moves for a total distance of more than 245 miles, and under this system, as found by

the Interstate Commerce Commission, the road's revenues were wholly adequate, and the adequacy thereof is, on page 174 of the report, ascribed largely to the "Differential Rates" as prescribed by the Railroad Commission of Texas. We may by a comparison of the class rates as now applied under the purported authority of the order get a reasonably accurate conception of the extent of the relief given this road with respect to its intrastate business. The base rates for distances of 10 miles or less are shown above; the "Differential Rates," as now applied by this road, for this distance, are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	2	2	1	1	1	1	1	1	1	1

So that the class rates now charged by this road, for this distance, are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	24	21	17	15	11	11	9	8	7	6

(it being remembered here that the Shreveport man does not pay any rate at all for this distance because he is more than 20 miles from the State line).

For a distance of 50 miles, the base rates are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	37	31	26	22	18	19	15	13	11	9

(which are the rates the Shreveport man would pay for this distance), and the "Differentials" are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	5	4	3	2	1	2	1	1	1	1

and the total rates are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	42	35	29	24	19	20	16	14	12	10

which are the rates the Amarillo man is required to pay; the pre-existing total rates for this distance were:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	27	25	23	21	18	19	16	13	11	8

For a distance of 100 miles, the rates now charged the Shreveport man are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	53	45	37	32	27	28	21	19	16	13

and the rates which the Amarillo man is required to pay on this road are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	63	54	45	39	33	35	26	23	19	16

while the pre-existing rates (which produced an adequate return) were:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	44	41	38	35	26	27	24	21	16	13

For a distance of 225 miles the rates which the Shreveport man would have to pay are:

Classes:	1	2	3	4	5	A	B	C	D	E
Cents	85	72	59	51	43	44	34	30	26	21

and the rates which the Amarillo man is required to pay are:

Class:	1	2	3	4	5	A	B	C	D	E
Cents 105	99	77	68	54	56	44	39	34	28	

and the pre-existing rates were:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	75	69	59	57	42	43	39	33	23	17

These increases are typical of the increase for all distances in both classes and commodities and illustrate the extent of the relief granted against the intrastate rates to a road which was already earning a fair and adequate return; on the issue of discrimination, it will be remembered that, as to this road, none of the rates, except for distances greater than 222 miles, can ever be used by Shreveport,—the entire burden of the increased revenue derivable from shipments moving for distances less than 222 miles must be borne by the people using the road in intrastate traffic; Shreveport does not pay one cent of it. The enormity of the

injustice thus perpetrated upon the patrons of this road is further indicated by the fact that the average distance haul of the local business on the line is only 103 miles, and of the interline intrastate business is only 172 miles. (Table 25, twenty-fifth annual report of the Railroad Commission of Texas.)

It would appear to be fundamental that a railroad must carry at reasonable rates. (Nor. Pac. Ry. vs. North Dakota, 236 U. S., 585, 595.) The right of the public to be protected against rates which are unreasonably high would appear to be equal to the right of the carrier to protection against rates which are unreasonably low. If the jurisdiction of the Interstate Commerce Commission over all the rates in question were conceded, we have a situation like this: The Commission has acted, and has finally acted in so far as the present order, presently operating, is concerned. It specifically finds that the body of rates, including those in question before it, produce an adequate return; with no evidence before it except as to the adequacy of the body of rates, and in spite of the finding referred to, it undertakes to authorize rates which are, manifestly, tremendously higher than those already found to be high enough. This, we say, it had no power to do. It could no more thus authorize the taking of the property of the patrons of this road than it could take the property of the carrier by prescribing rates lower than those already found by it to be too low. The rates thus increased by the order constitute about 60 per cent of the entire body of rates, and the injury to the public,—represented by these appellants,—is no small matter. Standing upon an order whose undoubted effect is such as we have described, this railroad company comes into court, pleads the finding of the Commission that its rates were already compensatory (Record, p. 117, the report being made a part of its bill), joins in the allegation that the appellees will derive "several million dollars" per year additional revenue from the order (Record, p. 125), and claims the right thereunder to add a large part of the "several million dollars per year" to its already adequate revenues, and thereupon secures an injunction

against the officers whose duty it is to protect the patrons of its road against unreasonable rates. This matter being specially pleaded (Record, pp. 50-53), and a specific prayer being made in appellant's answer asking that relief be denied this road even if it were granted to the others (Record, p. 50), the trial court refused to inquire into its merits and granted this road an injunction in order, as it says, to "preserve the status." In the meantime this road continues to extort unreasonable rates from its patrons, and will continue to do so for an indefinite length of time. Its patrons may apply for relief to the Texas Commission, but the Texas Commission must reply that it and the Attorney General is prohibited, by the injunction, from granting relief; they may apply to the Interstate Commerce Commission, but that Commission would reply that the matter is intrastate, and that it cannot grant relief (as it has in fact replied already) (Record, pp. 519-520; 516-518); they may apply, directly or through their public officers as they did do in this proceeding, to the court, but the court replies that the status should be maintained, refuses to consider the merits of the complaint, and permits the carrier to continue to extort. This does not appear to be equity, or due process. We submit that the report of the Interstate Commerce Commission makes a prima facie case, at least, against the legality of the rates now being charged by this railroad, and that it was, therefore, the duty of the trial court to pass upon the merits of this particular question; and having inquired thereinto, because of the facts disclosed, to refuse the relief asked for by the carrier. We do not believe it to be the function of equity, even while preserving the status generally, to permit a person to do a thing in the meantime which his claim itself shows that he has no right to do. We submit that the decree as to the Fort Worth & Denver City Railway Company, at least, ought to be reversed, and for such relief we pray.

In passing from this subject, we desire to call attention to this particular feature of the Report and order as furnishing a further and excellent illustration of the purpose and desire of the Inter-

state Commerce Commission to relieve the carriers generally against the Texas intrastate rates.

VII.

THE COURT AND THE JUDGES THEREOF ERRED IN GRANTING THE INTERLOCUTORY INJUNCTION AS PRAYED BY PLAINTIFFS, AND AS GRANTED, BECAUSE THE ORDER OF THE COMMISSION, OF DATE JULY 7, 1916, UPON WHICH PLAINTIFFS' CLAIM FOR RELIEF IS BASED, WAS, AND IS, VOID BECAUSE AS AFFIRMATIVELY APPEARS FROM THE RECORD ACCOMPANYING SAID ORDER ON PAGES 120 AND 121 THEREOF, THE INTERSTATE COMMERCE COMMISSION UNDERTOOK TO MAKE SAID ORDER APPLICABLE TO TERRITORY IN TEXAS WEST OF "EAST TEXAS" (AS DEFINED IN 34 I. C. C., 472) IN AN EFFORT TO PREVENT SUPPOSED DISCRIMINATION AS BETWEEN LOCALITIES AND CITIES WITHIN TEXAS WITH RESPECT TO MOVEMENTS IN INTRASTATE COMMERCE, AND DID NOT MAKE THE ORDER SO APPLY TO PREVENT UNDUE DISCRIMINATION AGAINST INTERSTATE COMMERCE AND BECAUSE OF THE PREMISES THE INTERSTATE COMMERCE COMMISSION COMMITTED AN ERROR OF LAW AND EXCEEDED ITS POWER TO SUCH AN EXTENT AS TO RENDER SAID ORDER AND PARAGRAPHS 9 AND 10 VOID AND UNENFORCIBLE. (RECORD, P. 572.)

Attention has been called above to the extreme meagerness and generality of the evidence as to Shreveport's interest in traffic moving throughout the State of Texas. As a matter of fact, there could be no contention that the evidence shows that Shreveport has ever had any traffic throughout all of Texas, or that it can have any reasonable expectation of doing business throughout

Texas. In view of this situation we have asserted the proposition that the order in question was given the broad territorial application which it has because of reasons other than the removal of discrimination against Shreveport. One reason therefor is stated in the marginal paragraph hereof. We base this proposition upon what is disclosed on pages 120-121 of the report, and upon certain other facts and conditions shown by the record. It is our contention that the report and the facts of record clearly show that the order was extended, territorially, because of the idea of the Commission that it was authorized to affect State rates in order to prevent discriminations as between localities within the State and with respect to purely intrastate rates. In order that the discussion contained on pages 120-121 of the report may be the more clearly understood, we deem it appropriate to call attention again to certain matters in the prior history of the controversy.

As stated above, the Railroad Commission of Louisiana, in its original complaint filed March 8, 1911, alleged discrimination with respect to rates between Shreveport and certain named points in extreme Eastern Texas. (Record, p. 346.) Upon this complaint the order involved in the original Shreveport case, 234 U. S., —, was made, which order was limited to the territory and stations named. (Record, pp. 360-363.) Afterward, the Railroad Commission of Louisiana filed what is called its *"supplemental petition"* (Record, pp. 363-364), upon which the supplemental report and order of the Commission was made,—reported in 34 I. C. C., 472. (Record, pp. 365 to 372.) No proof was offered in the proceedings upon this petition to show that Shreveport was at all interested in traffic other than in Eastern Texas, as defined in said report, and the case was limited to this territory. (Record, pp. 367-368.) The supplemental order was entered on June 17, 1915, and, manifestly, up to this time there was no idea in the mind of anybody that Shreveport's interest extended beyond "Eastern Texas." On October 30, 1915, the Railroad Commission of Louisiana filed a complaint, upon which, in part at least, the

present order was made, and in paragraph *V* thereof (Record, p. 390) the following prayer is contained:

"Therefore, petitioners bring this petition before the Interstate Commerce Commission and pray that an answer be required from each of the defendants, and that after a full hearing and due investigation said Interstate Commerce Commission will, by proper order, require the defendants to cease and desist from the aforesaid violations of the Act to Regulate Commerce, and will, by further order, prescribe on all the various classes and commodities (a more particular description of which commodities is contained in 'Appendix A' attached hereto) moving between Shreveport and points on the defendant lines, just and reasonable rates *for the transportation thereof between said Shreveport and all stations on said respondents' lines in said 'Eastern Texas,'* and require the establishment of non-discriminatory rates, rules and regulations for such transportation from or to Shreveport, to or from all Texas points, and also for the establishment of the same classification upon movements from or to Shreveport, to or from all points on the lines of the respondents in the State of Texas."

It will be noted that the specific prayer was that reasonable and non-discriminatory rates be fixed on the classes and commodities named *"moving between Shreveport * * * and all stations on said respondents' lines in said 'Eastern Texas.'"* Of course, counsel for appellees will say that the complaint contains a prayer in general terms broad enough to cover the entire State of Texas, but the specific prayer mentioned above certainly argues that Shreveport itself really thought that it was not interested in the traffic in Texas west of "Eastern Texas," as defined in 34 I. C. C., 472. At all events, the only evidence mentioned by the Commission, which would in any way tend to show that Shreveport has ever had any traffic in the two hundred thousand square miles of territory west of "Eastern Texas," is the very general statement contained on page 90 of the report and discussed by us in another connection above. This evidence, as pointed out, does not at all prove that Shreveport was interested west of "Eastern Texas."

With the nature of the allegations and prayer upon the part of Shreveport, and the generality of the evidence tending to show its interest west of "Eastern Texas" in mind, it must become apparent that one of the main reasons why the Commission made its last order extend to practically all of Texas was that the Commission thought it had jurisdiction over intrastate discrimination, and that it had the power to prevent the same by affecting the application of intrastate rates. Upon this subject the Commission says:

"Both complainants and intervenors call attention to the fact that one of the possible effects of our supplemental order might be to produce discrimination against certain localities in Texas. For example, Galveston and Houston lie east of the line we have heretofore described which formed the western boundary of the area in Texas to which the requirements of the supplemental order applied. Port Aransas lies west of the line. The tariffs filed by the carriers in response to the supplemental order carried increases in the rates from Galveston and Houston to Northeast Texas points, but did not increase the rates from Port Aransas to the same destinations. Paris, Texas, may be considered a representative point in Northeast Texas, 373.7 miles from Galveston and 508.3 miles from Port Aransas. The class rates which the carriers published in response to our supplemental order from Galveston to Paris are as follows:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	106	91	78	66	52	53	49	40	33	28

while the rates from Port Aransas are as follows:

Class:	1	2	3	4	5	A	B	C	D	E
Cents	87	78	65	61	47	49	43	36	25	19

"No transportation conditions have been shown that would justify the application of rates from Galveston higher than from Port Aransas to these Northeast Texas points. It is evident, also, that the scale of class rates required by the Texas Commission from many points west of the line we have described to points in

East Texas is materially lower than the rates authorized by the supplemental order for application from directly intermediate points to the same destinations. Had the published rates become effective, doubtless unjust discrimination against certain intrastate traffic in Texas would have been produced. Although, as stated, our order is intended to correct unlawful discriminations against interstate traffic, we would not designedly bring about a relation between intrastate rates that is unduly prejudicial to one section of the State as compared with another. We are urged by the complainants to give to our order in this case such broader scope as will prevent the discrimination to which attention has been directed." (Report, pp. 120-121.)

It will be noted that the supposed necessity for the extension of the order is not presented alone upon the complaint of Shreveport, but as well upon the suggestion of certain Texas "intervenors," and thereupon the Commission proceeds to point out certain supposed discriminations that would result, with respect to the application of rates between Galveston and Houston and "Northeast Texas points," on the one hand, and Port Aransas and "Northeast Texas points" on the other hand, this being followed by a finding that "no transportation conditions have been shown that would justify the application of rates from Galveston higher than from Port Aransas to these Northeast Texas points." It is then pointed out that had the rates published pursuant to the supplemental order (34 I. C. C., 472) become effective, "unjust discriminations against certain intrastate traffic in Texas would have been produced." The Commission then declares that it will not "bring about a relation between intrastate rates that is undoubtedly prejudicial in one section of the State as compared with another," and states that it was urged by the complainants to give to the order in this case such broader scope as would prevent the discriminations (that is, the intrastate discriminations—parenthesis ours) to which attention had been directed, and thereupon the order was extended from "Eastern Texas," as defined in 34 I. C. C., 472, so as to include practically all of Texas.

In view of these plain and unequivocal declarations by the Commission itself there is no ground for doubt that one of the main reasons, if not the leading reason, influencing the Commission to extend its order territorially, was its conception that it had the power to authorize State rates to be superseded in order to prevent discrimination between localities within the State and growing out of purely intrastate commerce. In view of the nature of the entire report, it seems clear to us that this was the sole reason for the extension of the order; but if we are in error as to this, still it cannot be doubted that this particular matter furnishes, at least, one of the material reasons therefor, and since no man can say that the order would have been so extended but for this matter, and since no man can say how far, if at all, the order would have been extended but for this matter, we say that the consideration and influence thereof vitiates the entire order, provided the Commission had no lawful right to exercise the power involved in preventing intrastate discriminations.

That the Commission is given no power at all over intrastate discriminations, would appear to be manifest from the very terms of the "Act to Regulate Commerce." The proviso of Section 1 of this act, as pointed out above, limits the application of the various other sections to interstate commerce, and this limitation is certainly carried forward into Section 3 itself. The functions of the Commission are those appertaining alone to interstate commerce. If, in the proper exercise of these functions to protect interstate commerce, a situation is brought about where discriminations in intrastate commerce itself results, this simply presents a problem to be solved by State agencies in accordance with the public policy of the particular State involved. In other words, so long as Shreveport, Louisiana, was protected in this case, neither Shreveport, Louisiana, nor the Interstate Commerce Commission were legally concerned about discriminations resulting from a difference in the rates between Galveston, Texas, and certain "Northeast Texas points" on the one hand, and between Port Aransas and the same "Northeast Texas points" on the other hand. A

difference in these particular rates certainly could not injure Shreveport; if it injured Galveston or Port Aransas, as the case might be, this is an injury to be redressed or not by the Texas authorities as the law and public policy of the State may require. It is our view that when Shreveport's own complaint was satisfied that its suggestion in behalf of the Texas cities constituted gratuitous and officious intermeddling into affairs not its own, and, in this conclusion, we think we are supported by the decision of this court in Philadelphia & Reading Railway Co. vs. United States, 240 U. S., 334.

Under the decision last cited, the law seems to be that one locality cannot make a complaint in behalf of another locality, in such a way as to invoke the jurisdiction of the Commission, nor, in the case put by the Commission in the excerpts quoted above, could Galveston, Texas, have filed, with the Interstate Commerce Commission, a complaint against Port Aransas, Texas, alleging the discrimination growing out of the difference of rates applying between Galveston and "Northeast Texas points" on the one hand and Port Aransas and the same points on the other hand. If such complaint had been filed, the Interstate Commerce Commission would have promptly dismissed the same with the statement that this was a question to be presented to the Railroad Commission of Texas. This is the plain meaning of the Act to Regulate Commerce itself.

We submit, therefore, that the Interstate Commerce Commission had no right or power to control the question of intrastate discrimination, or to permit such question to influence its decision, and that since it undoubtedly did so, it assumed a power which it did not have and used it in such a way as to render the entire order void. So. Pac. Co. vs. I. C. C., 219 U. S., 433, 444, 449.

VIII.

THE COURT AND JUDGES ERRED IN GRANTING THE INTERLOCUTORY INJUNCTION AS PRAYED FOR BY PLAINTIFFS, AND AS GRANTED, BECAUSE

SAID ORDER OF THE INTERSTATE COMMERCE COMMISSION, DATED JULY 7, 1916, AS CONSTRUED BY PLAINTIFFS AND BY THE COURT, UNDERTAKES TO PRESCRIBE INTERSTATE RATES APPLICABLE BETWEEN SHREVEPORT, LOUISIANA, AND POINTS IN TEXAS FOR ALL DISTANCES FROM ONE (1) MILE TO TWENTY (20) MILES, AND TO MAKE THE SAME THE MEASURE OF WHAT PLAINTIFFS CALL THE "STANDARD RATES" BETWEEN POINTS WITHIN THE STATE OF TEXAS FOR SUCH DISTANCES. ALTHOUGH THE SHORTEST DISTANCE, BETWEEN SHREVEPORT, LOUISIANA, AND ANY TEXAS POINT, BY THE LINE OF ANY RAILWAY, IS MORE THAN TWENTY (20) MILES, AND ALTHOUGH THE DISTANCE BETWEEN SHREVEPORT, LOUISIANA, TO THE NEAREST POINT ON THE TEXAS-LOUISIANA STATE LINE, BY THE LINE OF ANY RAILWAY, IS TWENTY (20) MILES OR MORE, AND ALTHOUGH THERE CANNOT POSSIBLY BE AN INTERSTATE SHIPMENT BETWEEN SHREVEPORT, LOUISIANA, AND ANY TEXAS POINT WHICH DOES NOT, NECESSARILY, MOVE MORE THAN TWENTY (20) MILES; SAID PORTIONS OF THE ORDER CANNOT, THEREFORE, BE PROPERLY CONSTRUED AS APPLICABLE TO SHIPMENTS MOVING BETWEEN POINTS IN TEXAS FOR DISTANCES OF TWENTY (20) MILES OR LESS, AND IF SO CONSTRUED, OR APPLICABLE, THE SAME IS VOID IN WHOLE, OR, AT LEAST, TO SUCH EXTENT; AND THE COURT ERRED IN GRANTING AN INTERLOCUTORY INJUNCTION WITH RESPECT TO INTRASTATE MOVEMENTS FOR DISTANCES OF TWENTY (20) MILES OR LESS. (RECORD, P. 573.)

The order of the Interstate Commerce Commission, as stated before, undertakes to prescribe interstate rates for all distances from 1 to 20 miles, etc., and the carriers, under the purported authority of paragraphs "IX" and "X" of the order, have superseded the intrastate rates for these distances and are now charging therefor rates equal to those prescribed in the order. The rates prescribed for such distances by the order are very materially higher than the Texas intrastate rates; the table below shows a comparison of the class rates for these distances,—the first line thereof showing the classes, the first line, opposite each distance group, showing in cents per 100 pounds the rates prescribed in the order, and the second line opposite each distance-group showing the Texas Commission's rates in cents:

Classes:	1	2	3	4	5	A	B	C	D	E
10 miles and less....	23	19	16	14	10	10	8	7	6	5
	13	12	10	8	6	7	6	5	5	4
12 and over 10.....	27	22	19	16	12	13	10	9	8	6
	14	12	11	9	6	7	6	5	5	4
15 and over 12.....	27	22	19	16	12	13	10	9	8	6
	15	13	12	10	7	8	6	5	5	4
18 and over 15.....	27	22	19	16	12	13	10	9	8	6
	16	14	12	10	8	9	7	6	5	5
20 and over 18.....	27	22	19	16	12	13	10	9	8	6
	17	15	13	11	9	10	8	6	6	5

Like conditions exist as to the various commodity rates.

A large proportion of intrastate traffic moves for these distances.

These increased rates were prescribed by the Interstate Commerce Commission upon the application of the carriers. (Report, pp. 90-95.)

Of course the complaint of Shreveport did not include these short-distance rates for the simple reason that Shreveport is located more than 20 miles from the Louisiana-Texas State line via the shortest route. It is manifest that these particular rates have never been and can never be used in interstate traffic.

It is our contention that since the rates can never, under any circumstances, be used in interstate commerce, the Commission was wholly without authority to prescribe them as interstate rates, and that its act in doing so was a pure "abstraction" if not a nullity. Of course, they were prescribed, upon the application of the carriers, for the sole purpose of attempting to authorize the carriers to supersede the State rates and thus, substantially, to increase their revenues. We think no other plausible reason can be found therefor, and that this was the real reason is demonstrated by the report itself.

We have presented the matter in another connection as evidence of the Commission's intention to grant the railroads increased revenues regardless of the question of discrimination against interstate commerce. We present it here as a reason, intrinsically, why the order does not afford the carriers any justification for disregarding the State's rates for these distances. And in this, we think, we are amply supported by the opinion of this court in the original Shreveport case, supra.

For how can the State and the interstate rates, in this instance, be "so related that the government of the one involves the control of the other" when a comparable interstate rate,—as a practical matter,—does not exist? The possibility of the necessary relation is negatived by the Commission's findings of prejudice against Shreveport. For, says the Commission:

"There is no doubt concerning the *disparity* that exists between the class rates and rates on most commodities from Shreveport to destinations in Texas *as compared* with rates from Texas points to the same destinations for like distances. It is equally clear that the commodity rates *from Texas points to Shreveport* are materially higher than the rates to points in Texas for *like distances.*" (Report, p. 118.)

It will be seen from the above that it is the mere *difference* in the two rates compared that is found to constitute prejudice. It is clear, also, that the rates compared are rates between points in Texas and Shreveport, on the one hand, and rates within Texas,

"for like distances," on the other hand. It is the "relationship" between these two rates which is found to prevent "the free and normal movement of traffic to and from Shreveport," and which "to *that extent* is unduly prejudicial to that locality." (Page 118.) This finding of unjust discrimination is specific, as to what rates are involved, and there is no reason for extending it. Now as to the distances under discussion, no "interstate rate" existed, because there was no occasion for it to exist, and because if it had been published it could never have been used. How can a rate, which does not exist, be compared with one which does exist, and how can there be established a comparison, as to volume, between the existent and the non-existent? And how could a "difference" or a "disparity" therein be found? It is said that it is the difference in the two rates compared which prevents the movement between Shreveport and Texas; it is said that because the "interstate rate" is materially higher than the State rate the "normal movement" interstate is "prevented." If this be true, then if the "interstate rate" is materially reduced below the intrastate, the movement between Shreveport and Texas ought to increase. But suppose the Commission, or the carriers, had published an "interstate rate," for distances of 20 miles and less, equal in volume to only one-half of the intrastate rate; or suppose the carriers had offered to carry traffic shipped from Shreveport to points in Texas "twenty miles distant" free of all charges; could the volume of traffic, under any circumstances, have increased even one pound in a thousand years? There would have been exactly 0 pounds of such traffic before the offer; there would have been exactly 00 pounds the next year, and no more and no less at the end of a hundred years. So the conclusion is inevitable that the Interstate Commerce Commission did not have interstate rates for these short distances in mind when it made the finding of prejudice against Shreveport; this must be true because the basis of the finding necessarily denies any such idea. It must follow, also, that the short-distance rates were prescribed inadvertently, or else they were prescribed for some other reason than "discrimination" against

Shreveport. If the contention is to be made that they were prescribed because of the issue of discrimination, the reply is that the finding of prejudice itself negatives the proposition. If counsel for appellees seek to bring them within the finding of prejudice, the reply still remains that the only finding of prejudice in the report is confined to a comparison of two existent rates, one State and the other interstate, and a resultant ascertainment of a "difference" therein. The twenty-mile rates simply have no place in the finding, and the finding being specific, on this point, there can be no basis for broadening it.

We submit, therefore, that the portion of the order which deals with the "base rates" for twenty miles or less, with respect to its supposed effect upon the State rates, is a nullity, and affords the carriers no justification for superseding the State regulations to that extent.

Counsel for appellee, of course, will reply that even if this is true it affords no basis for relief to us here. But in this they will be in error.

In the first place, no man can say that the order, in its entirety, would have been given the form it now has but for the prescription of the twenty-mile rates and their supposed effect upon the State regulations. These rates, as is apparent from the discussion on pages 90-95 of the report, were used as "a starting point" for the construction of the entire scales, and this being true it is, we think, reasonably to be assumed that the entire scales would have had a different form if a different "starting point" had been used. At all events, it is impossible to say that this would not have been the result. And so, if there was error in prescribing the rates for short distances, it is more than likely that the error runs through each and every provision of the order.

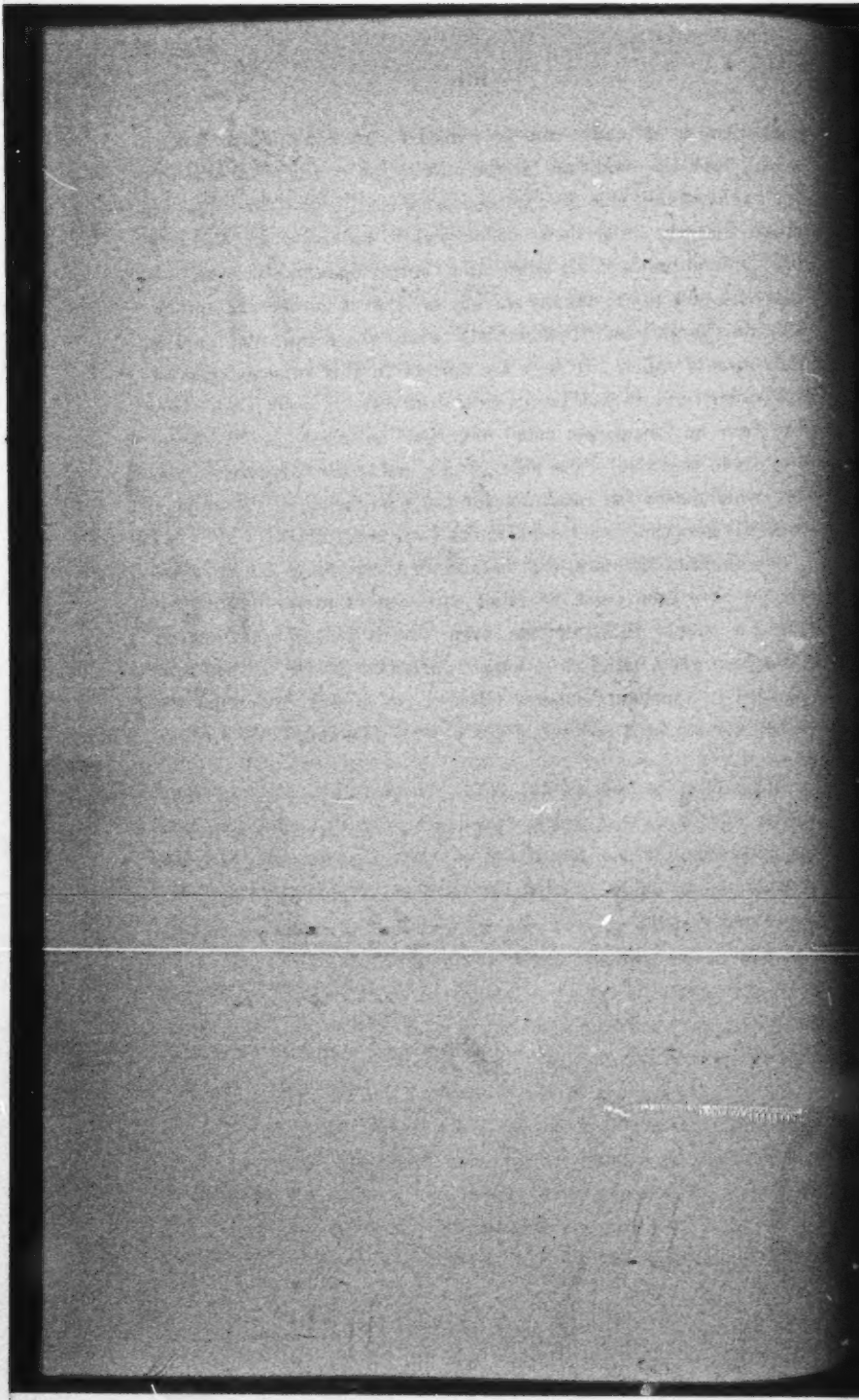
But even if the "twenty-mile" provisions of the order may properly be severed, the result upon the application of the "Differential Rates" is direct. For under the express terms thereof the "Differentials" may only be charged as *"exceeding"* the "maximum rates" prescribed. (Page "V" of the order.) If, there-

fore, there is no lawful rate prescribed for twenty miles or less as a base rate, the condition for the application of the "Differential" for twenty-mile hauls does not exist. We, of course, take the position that the order does not purport to authorize the charging of "Differentials" at all where the "entire distance traversed" is less than 400 miles; but the carriers say that it purports to authorize the charging of "Differentials" even where the total haul is only twenty miles. If they are correct in this interpretation of the order, and if the twenty-mile base rate is void, then there has been no "maximum rate" prescribed to which the "Differential" is to be added. The thing which makes the twenty-mile base rate void makes the *condition* for the application of the twenty-mile "Differential" void, even under their construction.

We submit, therefore, that because of these things the appellees should have been given no relief with respect to shipments moving for twenty miles or less, even though they might properly have been given relief as to longer distances. These matters were pleaded in appellants' answer (Record, pp. 45-46), and relief was asked against each portion of the order. (Record, p. 54.)

Wherefore, because of the many errors in the judgment and order of the district court, appellants pray that said judgment be reversed in whole, but if not in whole then in part, and that appellants herein be granted the relief as prayed in their answer in whole or part.

B. F. Looney
B. F. LOONEY,
Attorney General.
Luther Nickels
LUTHER NICKELS,
Assistant Attorney General.
Appellants Pro Se.



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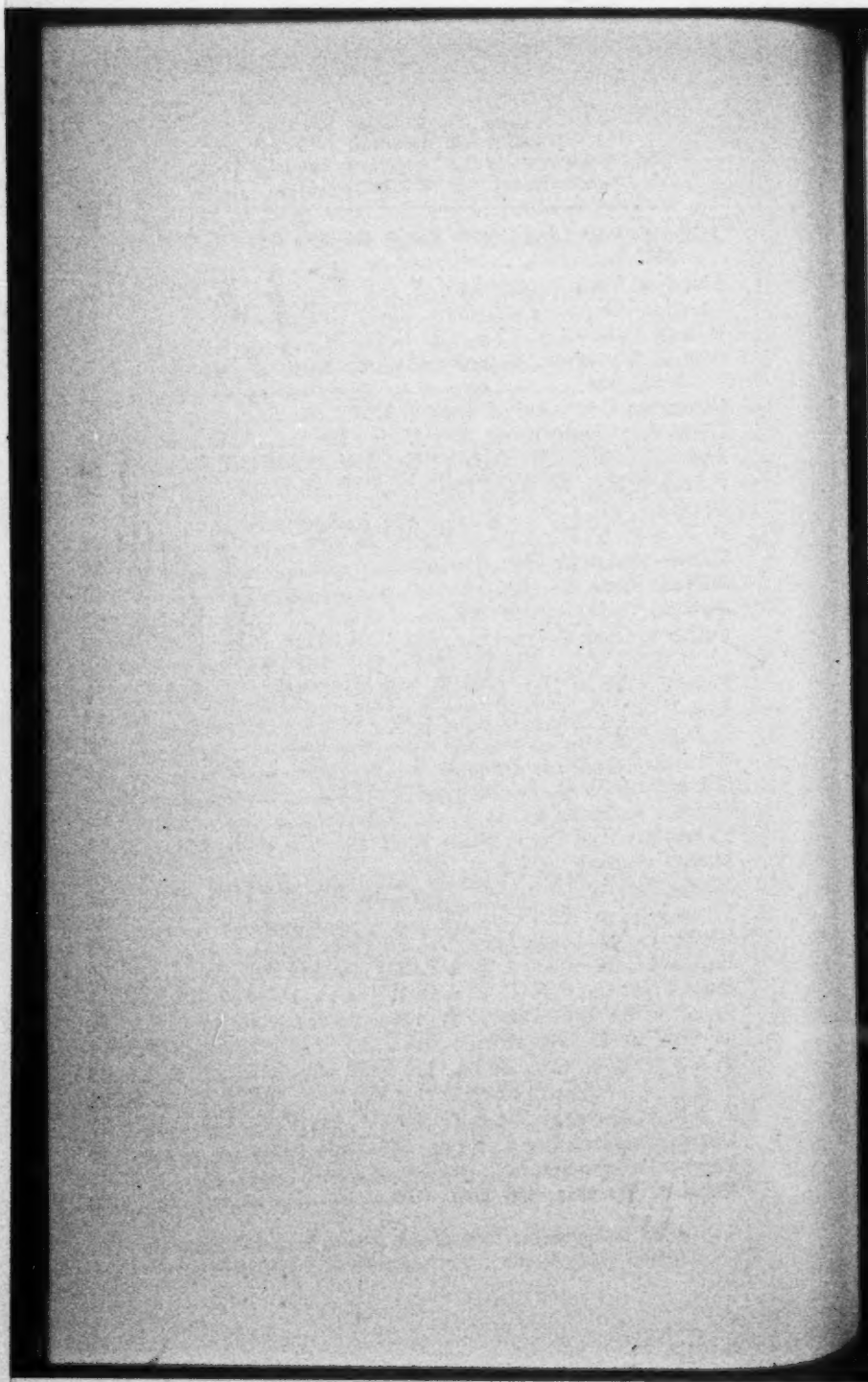
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IN THE

SUPREME COURT

OF THE UNITED STATES

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL OF THE STATE OF TEXAS,
Appellants,

vs.

EASTERN TEXAS RAILROAD COMPANY ET AL.,
Appellees.

No. 756

Appealed from the District Court of the United States for the Western District of Texas

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BRIEF FOR APPELLEES

Statement of the Case.

This is a suit brought by appellees by supplemental bill in an equity case pending in the District Court of the United States for the Western District of Texas, to restrain the prosecution of a suit filed by appellants, B. F. Looney, Attorney General, and Luther Nickels, Assistant Attorney General, of the State of

Texas, in the District Court of Travis County, Texas, upon the ground that the District Court of the United States for the Western District of Texas had already acquired jurisdiction of the matters and things involved in the suit filed in the State Court. An injunction was prayed restraining appellants from further prosecution of such suit. Temporary injunction was granted, and appellants prosecute appeal to this Court.

On July 7, 1916, the Interstate Commerce Commission made its order prescribing rates on various classes and commodities of freight from Shreveport, La., to points within the State of Texas, from points within the State of Texas to Shreveport, and between points within the State of Texas. The report and order of the Interstate Commerce Commission are found in the Record, pages 139-194. The order of the Interstate Commerce Commission by its terms became effective November 1, 1916.

The order of the Interstate Commerce Commission was made upon the petition of the Railroad Commission of Louisiana, and involved the contention upon the part of petitioners that the intrastate rates between points within the State of Texas, being lower than the rates between Texas points and Shreveport, and that the Texas classification by reason of lower carload minimums and other regulations being more favorable to intrastate shippers than the Western Classification applying between Shreveport and

Texas, operated as a discrimination against Louisiana shippers.

The Interstate Commerce Commission having found that discrimination existed by reason of these facts; that it was undue and illegal, established reasonable rates between Shreveport and Texas points and ordered the discrimination removed, the order in that regard being that the carriers were required to maintain and apply to the transportation of property between Shreveport, Louisiana, and points in the State of Texas rates not in excess of those contemporaneously applied by them for the transportation of like property for like distances between points in the State of Texas. It was likewise ordered that the Western Classification be applied throughout the State of Texas.

It is not disputed herein that the order of the Interstate Commerce Commission was applicable to the entire State of Texas.

The carriers, appellees herein, being threatened with prosecutions by the State authorities if in compliance with the order of the Interstate Commerce Commission they undertook to apply rates within the State of Texas different from those prescribed under the orders of the Railroad Commission of Texas, on the 4th day of September, 1916, filed suit in the District Court of the United States for the Western District of Texas, being cause entitled "Eastern Texas Railroad Company et al., Plaintiffs, v. Railroad Com-

mission of Texas et al., Defendants." (See original bill of complaint, Tr., 111-138.)

The original bill of complaint set up the order of the Interstate Commerce Commission, alleged their purpose to comply therewith, attached thereto copy of the tariff, which is herein referred to as "Texas Lines Tariff 2-B, I. C. C. 33," which they intended to file with the Interstate Commerce Commission as compliance with the order of said Commission, alleged that the Railroad Commission of Texas and the Attorney General of said State were threatening prosecutions under the Texas statutes for penalties, and that, unless restrained from so doing, the Railroad Commission of Texas and the Attorney General, as well as individual shippers, would file suits for the penalties prescribed under the Texas statutes for the application of rates upon Texas shipments other than those prescribed by the Railroad Commission of Texas, and that this would result in a multiplicity of suits upon the part, both of the State authorities and of individual shippers, for confiscatory penalties upon each and every shipment. The members of the Railroad Commission of Texas, B. F. Looney, the Attorney General of said State, and various shippers as representatives of a class were made parties defendant; and temporary restraining orders were prayed preventing the filing and prosecution of suits by the Railroad Commission of Texas, the Attorney General of Texas and by individuals and corporations

for the charging by plaintiffs on and after November 1, 1916, of the rates prescribed and authorized in the order of the Interstate Commerce Commission of date July 7, 1916, on shipments moving between points in the State of Texas; and it was further prayed that these defendants and all other officers, individuals, persons and corporations, their or its attorneys, agents and employes be restrained from claiming or instituting, or causing to be instituted, suit or suits, civil or criminal, against plaintiffs, for the recovery of any damages, overcharges, fines or penalties under the statutes of Texas for failure of the plaintiffs to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission in its order of July 7, 1916, or for the charging by plaintiffs or any of them on shipments moving between points in the State of Texas on and after November 1, 1916, the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916; and restraining the said Railroad Commission of Texas and the members thereof, and their successors in office, from furnishing to any person or persons copies, certified or otherwise, of any of said tariffs of rates, circulars, schedules, rules, orders, and classifications, or of the orders establishing the same, of

the Railroad Commission of Texas, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that plaintiffs, or either or any of them, have not observed and do not observe and obey the tariffs of rates, circulars, schedules, rules, orders and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916; and from requesting or authorizing the Attorney General or any other officer of the State of Texas to institute any proceedings against plaintiffs or either of them for failure to obey, or for disregarding the tariffs of rates, circulars, schedules, rules, orders and classifications of the Raliroad Commission of Texas. It was further prayed that the temporary relief asked be perpetuated upon final hearing. (Tr., 135-136.)

This bill of complaint as a separate and independent branch thereof attacked the entire body of rates installed and enforced by the Railroad Commission of Texas upon the ground that they were inherently unreasonable and confiscatory, and injunction on final hearing was asked against their enforcement. This branch of the case is not material here, however, and need not be further referred to.

The bill of complaint also attacked a certain order, No. 5060, of the Railroad Commission of Texas, cancelling certain advanced schedules of rates which it had installed, and asking temporary and final relief

against this order of cancellation. This order No. 5060, however, has, during the progress of this litigation, been canceled by the Railroad Commission of Texas, and is not material to this inquiry.

So that only that portion of the original bill of complaint filed September 4, 1916, which seeks to protect the carriers in their compliance with the order of the Interstate Commerce Commission of July 7, 1916, is here involved.

The District Judge of the Western District of Texas being absent from his district, the original bill, duly verified, was presented to Judge D. A. Pardee, Circuit Judge for the Fifth Circuit, with prayer for temporary injunction and immediate issuance of restraining order. Whereupon, Judge Pardee, on the 2nd day of September, 1916 (Tr., 61), endorsed on said original bill his temporary restraining order, to remain in force until the hearing of the application for a temporary injunction, restraining the Railroad Commission of Texas, the Attorney General, and other defendants, and all others with notice, from filing and prosecuting suits against plaintiffs for charging on or after November 1, 1916, the rates prescribed and authorized by the Interstate Commerce Commission in its order of July 7, 1916, on shipments moving between points in the State of Texas, and such temporary restraining order was directed to remain in force until the hearing and termination of the ap-

plication for an interlocutory or temporary injunction.

The hearing for a temporary injunction was set down for September 28, 1916, at Atlanta, and Circuit Judge Richard W. Walker and District Judge William T. Newman were called to his assistance in accordance with the statute, to determine said application.

The hearing for temporary injunction upon request of the defendants, Railroad Commission of Texas and the Attorney General, was by Judge Pardee on September 25, 1916, postponed to November 8, 1916 (Tr., 62), when it was set for hearing at Ft. Worth, Texas.

On November 6, 1916, the hearing for temporary injunction was, upon the application of the Railroad Commission of Texas and the Attorney General, postponed by order signed by Circuit Judges Pardee and Walker, until "some date subsequent to December 6, 1916, to be determined and designated by Hon. Judge Don A. Pardee, Presiding Judge, place of hearing to be designated by Judge Pardee" (Tr., 62-63), the order reciting as follows:

> "The Railroad Commission of Texas and the Honorable B. F. Looney, Attorney General of Texas, have asked for a postponement of said hearing until the Interstate Commerce Commission shall have heard and acted upon the various petitions to re-open for further hearing and argument the case of Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway

Company, which has been set down for hearing December 6, 1916."

In the meantime, on the_____day of September, 1916, the Railroad Commission of Texas and the Attorney General of Texas had filed their original answer (Tr., 194-221), in which, after making reply to the bill of complaint, they set up by way of cross-bill that the order of the Interstate Commerce Commission is void in whole and in part and that the tariffs filed by the carriers in alleged compliance with the order of the Interstate Commerce Commission of July 7, 1916, were not justified by the order. The United States Government and the Interstate Commerce Commission were made parties, process was prayed against them, and affirmative relief was asked, as follows:

"Paragraph XXVII. Defendants say that, as aforesaid, the plaintiffs herein are contending that said order of the Interstate Commerce Commission authorizes them to make and file tariffs, rates and classifications, etc., equal to the maxima rates, etc., prescribed by said order, and that, as shown by the bill of complaint, plaintiffs are now engaged in making such tariffs, rates, etc., and propose to file the same with the Interstate Commerce Commission prior to September 30th, 1916, and contend that said tariffs, rates, etc., when so filed, and after November 1st, 1916, will become the lawful rates to be charged on intrastate traffic to the exclusion of rates, etc., prescribed therefor by the Railroad Commission of Texas, and plaintiffs propose, under the supposed authority of said order, on and after No-

vember 1st, 1916, to apply such rates, etc., so made and filed by them, to intrastate shipments in Texas, to the exclusion of the rates, etc., therefor prescribed by the Railroad Commission of Texas, and thereby impose upon the shippers of Texas, whom these defendants represent herein, and upon Wadel-Connally Hardware Company, defendant, who joins in this answer and prayer, and who will have many intrastate shipments affected thereby, greatly increased rates and burdens, and therefore great and irreparable injuries, for which defendants have no adequate remedy at law.

"As aforesaid, defendants say that said order of the Interstate Commerce Commission can be complied with by plaintiffs, and each of them, without affecting or setting aside or ignoring the intrastate rates, etc., prescribed by the Railroad Commission, and because of the premises set forth in this answer they should be compelled to comply with said order without affecting, setting aside or ignoring such intrastate rates, and their rights, if any they have, to affect, set aside or ignore said intrastate rates depends, not upon said order, but upon other matters—many of them matters of fact—involved in this cause.

"Wherefore, defendants pray that this Honorable Court enter an order restraining the plaintiffs, and each of them, from preparing or filing or thereafter observing any tariff, rate, etc., for intrastate shipments in Texas other than the tariffs, rates, etc., theretofore prescribed by the Railroad Commission of Texas; that plaintiffs, and each of them, thereupon be given notice hereof, and that this application be set for hearing, and upon such hearing that the court grant defendants an injunction, and enter its order restraining plaintiffs from filing, or applying to

intrastate shipments in Texas any rates other than those prescribed therefor by the Railroad Commission of Texas pending the final disposition of this suit.

"Paragraph XXVIII. In conjunction with the prayer contained in subdivision XXVII hereof, or, in the alternative, and by reason of all the premises in this answer set forth, defendants pray that the Interstate Commerce Commission and the Attorney General of the United States be given notice hereof as provided by law, that this matter be set for hearing for the purpose, and thereupon that the court enter its order suspending said order, or restraining the enforcement, operation and execution of the same pending the final disposition of this cause; and because of the irreparable injury and damage which will ensue to defendants and those represented herein by them—which will be made to appear more fully upon hearing hereof—by reason of the premises set forth in this answer, and unless the relief prayed for herein shall be granted, defendants pray that notice be given the Interstate Commerce Commission and the Attorney General, as provided by law, and that as soon as practicable thereafter this court allow a temporary stay or suspension, in whole or in part, of the operation of said order for not more than sixty days from the date of the court's order, and pending the application aforesaid."

In paragraph XXVI of said original answer, it was prayed that upon final hearing hereof said order of the Interstate Commerce Commission be annulled and set aside in whole, and in the alternative, they pray that said order be given the construction contended for in this answer, and that the same be limit-

ed thereto, and that the remainder of said order be set aside and annulled. (Tr., 219-220.)

On the_____day of March, 1917, the Railroad Commission of Texas and the Attorney General (Tr., 249-260) filed their amended answer and cross-bill, amplifying their original answer, and asking affirmative relief, substantially as originally prayed for.

The plaintiffs filed replication to this amended answer, and among other things objected to the bringing in of the United States Government and the Interstate Commerce Commission, for the reason that the order of the Interstate Commerce Commission could only be attacked by suit against the United States in the district of the residence of petitioner upon whose complaint the order was made; that the order of July 7, 1916, was made upon the petition of the Railroad Commission of Louisiana, the residence of which was at Baton Rouge, in the Eastern District of Louisiana. (Tr., 312-337.)

The Railroad Commission of Louisiana, by plea of intervention (Tr., 238-244), also set up that the court was without jurisdiction to grant the prayers of the answer of the Railroad Commission of Texas that the order of the Interstate Commerce Commission be set aside in whole or in part, for the reason that said order could only be attacked in the District Court of the United States for the Eastern District of Louisiana.

On April 4, 1917, the United States, through the

Attorney General thereof, filed a special appearance and motion, by which it denied that it could be made a party to this cause, for the reasons that (1) no order had been made by the court making it a party or requiring it to answer; (2) it is not a party to the case, and cannot be brought in as a new party by cross-petition or answer in the nature of a cross-petition; (3) it could not be sued in the Western District of Texas, because that is not the judicial district wherein the residence of the party or any of the parties upon whose petition the order of the Interstate Commmerce Commission was made, the proper venue, if any, being the judicial district for the Eastern District of Louisiana; (4) it had not consented to be sued in the manner and form in which attempt had been made to sue in this cause.

By first supplemental bill (Tr., 244-249) plaintiffs set up that since the filing of the original bill plaintiffs had filed with the Interstate Commerce Commission their tariff 2-B and various supplements thereto; that the same had become effective on November 1, 1916, and that the various rates and charges therein prescribed were in all respects in compliance with and authorized by the order of the Interstate Commerce Commission of date July 7, 1916. It was further set up in said supplemental bill that the defendant Looney, appearing for the State of Texas and as Attorney General of said State, had petitioned the Interstate Commerce Commission for a re-hearing,

for the purpose of setting aside its order of July 7, 1916, and to suspend said Tariff 2-B, alleging among other things that said Tariff 2-B was not in conformity with or authorized by said order of July 7, 1916. That this petition was heard under the direction of the Interstate Commerce Commission by its Suspension Board, on the 19th and 20th days of October, 1916, and that thereafter the petitions for re-hearing and suspension were considered by the Interstate Commerce Commission, and on the 31st day of October, 1916, the Interstate Commerce Commission made its order the effect of which was to suspend the rates on cattle, lignite, wood and tanbark, named in said Tariff 2-B, until the 1st day of March, 1917, unless otherwise ordered by the Commission, and to authorize, sanction and permit the balance of said Tariff 2-B as in conformity with and authorized by said order of July 7, 1916, to take effect on November 1, 1916, and that also on the 31st day of October, 1916, the Interstate Commerce Commission made its order setting down for argument on December 6, 1916, the petition of Attorney General Looney and others for a re-hearing and a re-opening of matters dealt with in said order of the Interstate Commerce Commission of July 7, 1916, and for a suspension of said Tariff 2-B, which argument was had before the Interstate Commerce Commission at Washington on the 6th and 7th days of December; and that thereafter, on the 26th day of January, the Interstate Commerce Commis-

sion made its order granting a re-hearing, but providing that pending such re-hearing and decision the order of July 7, 1916, should remain in full force and effect; that on or before the 6th day of December, 1916, the Railroad Commission of Texas became a party by voluntary intervention in Cause 8418, Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway Company et al., before the Interstate Commerce Commission, and that the Interstate Commerce Commission had ordered a hearing before one of its examiners, beginning at Dallas, Texas, March 12, 1917, to take and receive evidence on the re-hearing of said cause of Railroad Commission of Louisiana v. Aransas Harbor Terminal Railway Company et al., and that upon the application of the defendant Looney the date of said hearing at Dallas was postponed until March 26, 1917, and again by his application the date of the hearing was postponed to April 16, 1917. Repeating the prayers of the original bill, it was prayed as follows:

> "Wherefore, premises considered, plaintiffs pray as in their original bill, and further:
>
> "(*a*) That your Honors grant a temporary injunction restraining B. F. Looney, as Attorney General, his successors in office, and all others, from filing any suit or suits against the plaintiffs or either or any of them, or against either or any of the companies of whose properties either or any of the plaintiffs are now receiver or receivers, for forfeiture of charter or charters, or any other rights under the Constitution, statutes and laws of the State of Texas, and re-

straining said B. F. Looney individually and as Attorney General, his successors in office, and all others, from applying to any court or judge, other than the Judges of the United States for the Fifth Circuit and the Western District of Texas, for the appointment of any receiver or receivers for the railroads or other properties of plaintiffs, or either or any of them, or of the properties of either or any of the companies of which either or any of the plaintiffs are now receiver or receivers, and that until the application for a temporary injunction can be heard and decided, your Honors grant a temporary restraining order embracing the relief herein prayed for, to continue in effect until said application for a temporary injunction is decided.

"(*c*) That your Honors grant a temporary injunction restraining the defendants the Railroad Commission of Texas and the members thereof, and B. F. Looney, as Attorney General, his successors in office and all other persons, from undertaking to require plaintiffs or either or any of them to charge the rates prescribed and named by the Railroad Commission of Texas, where such rates vary or differ from the rates named in said Tariff No. 2-B and the supplement thereto, for application between points in the State of Texas, by the filing of penalty suits against plaintiffs, or either or any of them, or in any manner or way or by any form or process of law

"(*d*) That on final hearing hereof all relief in this and in the original bill of complaint prayed for be made perpetual."

The Railroad Commission of Texas and B. F. Looney, Attorney General, on March 26, 1917 (Tr., 337-341) filed first supplemental answer to plaintiffs' first

supplemental bill, contesting the validity of the order of the Interstate Commerce Commission, and denying that the tariffs issued by the carriers in alleged compliance therewith were justified by the order.

On the 28th day of February, 1917 (Tr., 63), Judge Pardee, on application of all parties that the case should be set for hearing on the application for an injunction, set down the same for April 4, 1917, at chambers in the City of New Orleans, State of Louisiana.

The hearing for the temporary injunction was had before Circuit Judges Pardee, Walker and Batts. All the evidence introduced before the Interstate Commerce Commission was before the three Judges, the case was fully argued, and in opinion rendered by Judge Pardee (Tr., 64-69), it is said:

> "From the foregoing it clearly appears that the complainant carriers both in the original bill and the intervention are in jeopardy. If they fully comply with the order of the Interstate Commerce Commission, and put in force the tariffs authorized by that body, they will be subject to a multiplicity of suits by the Railroad Commission of Texas and by shippers, involving heavy and even confiscatory penalties. If, on the other hand, they do not comply with the order of the Interstate Commerce Commission, but do comply with the orders made and tariffs prescribed by the Railroad Commission of Texas, they will be subject to a multiplicity of suits, with liability to be mulct in very large penalties.
>
> "It seems clear that they are entitled to the protection of the court. *Ex Parte* Young, 209 U.

S., 123; Wadley Southern Railroad v. Georgia, 235 U. S., 651.

"We assume that the order of July 7, 1916, involved herein, is valid; Houston & Texas Central Railroad Company v. United States, 234 U. S., 342, and the validity thereof can only be attacked directly; and, whether it is properly in issue in this case, and whether the court has jurisdiction (see 38 Stat. at L., p. 219) can only be decided upon the trial thereof. It certainly cannot be attacked collaterally in any case.

"The issues made herein in regard to certain specific rates published in tariff promulgated under order of July 7, 1916, and whether or not such rates are unreasonable or discriminatory or otherwise illegal, are now pending before the Interstate Commerce Commission, the only body competent to originally pass upon the same. Certainly, at this time, we are not called upon to decide upon the merits of the case. On the hearing before this special tribunal it seems that we are not called upon to try or decide any of the questions presented upon the pleadings further than to determine if the bill itself as amended presents a case for equitable relief. On this issue enough has been stated to show that the complainants are entitled to such relief, and we find on the facts proved that the protection of the complainants requires the issuance of a temporary injunction substantially as prayed.

"And it is so ordered."

The concurring opinion of Circuit Judge Batts (Tr., 73-77), among other things, says:

"After the rendition in 1913 of the opinion by the Supreme Court of the United States, the order of the Interstate Commerce Commission was enlarged to affect the rates of all common car-

riers within Eastern Texas, and, subsequently, further enlarged to include the entire State. The order also fixed the interstate rates between Shreveport and Texas points, and required the use, with reference to Texas business, of the Western Classification, in lieu of the classification prepared by the Railroad Commission of Texas.

"Being required under the order to adjust their intrastate rates to the Shreveport rates established by the Commission, the railroads prepared rate sheets and tariffs, which they claimed to be in conformity with the order, and filed them with the Commission. * * If the rates from Texas points to Shreveport are reasonable, and if the application of the rates made by the Railroad Commission of Texas to points within Texas constitutes unjust discrimination against Shreveport, the Texas made rates are invalid. Under the terms of the Interstate Commerce Commission Act, the railroads of Texas may be prosecuted for charging the Texas rates. This results entirely without reference to any action which may be taken or which may have been taken by the Interstate Commerce Commission. The Texas railroads are entitled to protection against contemplated State action which would result from their failure to violate the law.

"The Interstate Commerce Commission has established the Texas-Shreveport rates. These rates must be regarded as reasonable until set aside in the manner provided by law. The Interstate Commerce Commission has declared that the use of the Texas rates will constitute a discrimination against Shreveport. This Commission is one of the agencies designated by the law for the purpose of primarily determining whether a discrimination exists. The law evidently

contemplates that when the Interstate Commerce Commission shall have made an order, it is ordinarily to be obeyed until that order is set aside in the manner indicated by the law. * * *

"The order under investigation in this case is exceedingly comprehensive. It breaks down the intrastate rates of the State of Texas. These rates have not been held unreasonable. They are the result of many years of labor by an authorized rate-making body. They have, until the Interstate Commerce Commission acted, been acquiesced in by the railroads. * * *

"But the order is. It may be that it has been improvidently made. It may be that parts of it are invalid. It may be that when this case is finally tried, it will be set aside in whole or in part. But it is not possible for us to hold the order void. A part of it has already been passed upon by the Supreme Court of the United States, and has by that tribunal been declared valid. * * * It has been made to reasonably appear that but for the restraining order heretofore made the railroads of Texas would have been subjected to numerous and destructive suits for penalties, for the collection of overcharges, and for infractions of the Texas Railroad Commission law. But for this judicial action their obedience to the order of the Interstate Commerce Commission would have been destructive of their property rights. If they had not obeyed the Interstate Commerce Commission's order they would have been subjected to the danger of suits and prosecutions by the United States Government. Those conditions continue, and would seem to peculiarly demand the interference of the judiciary. * * *

"The granting of the injunction prayed for by the railroads necessarily carries with it the refusal to grant a temporary injunction to the de-

fendants. A serious question exists as to whether or not their cross-bill can be entertained in this suit. It is an attack upon an order of the Interstate Commerce Commission, and the law provides that it shall be instituted in the District Court of the residence of the party at whose instance the order was made. It may be that, under the facts of this case, jurisdiction would lie only in the Western District of Louisiana. In addition to fixing the venue of suits of this kind, the law contemplates that the order setting aside the action of the Interstate Commerce Commission should be determined by a court of three judges. It is certainly not contemplated that, in passing upon an application for a temporary injunction the merits of a case which would require weeks for a proper trial, and the merits of a cross-bill which would require as long a time for disposition, would be considered and determined. The purpose of a temporary injunction is to protect rights, as far as possible, during the period necessary for the proper disposition of the case. Sometimes such an injunction necessarily involves the merits of a case. We have not considered it necessary or desirable that present adjudication of the matters involved in this case should be undertaken. In addition to reasons suggested heretofore, the whole rate situation in Texas is yet before the Interstate Commerce Commission, and a satisfactory solution of the difficulties which have appeared may be reached. The order entered herein is not intended to adjudicate any of the issues made by the pleadings, but merely to maintain a status which will result in a minimum of harm."

The special court entered the following order:

"This cause came on to be heard on motion for

a temporary injunction in the above entitled causes on the 4th day of April, 1917, before the undersigned, Don A. Pardee, Circuit Judge in Chambers at New Orleans, and the Honorable R. W. Walker and R. L. Batts, Circuit Judges, called to assist under Section 266 of the Judicial Code, and evidence introduced, and was argued:

"Whereupon, on consideration of the law and the evidence, and the order of the Interstate Commerce Commission of July 7, 1916, and for the reasons filed herewith, it is ordered that a temporary injunction issue as prayed for, enjoining and restraining during the pendency of these actions or until further order by the court, the defendants and each of them, and all other officers, individuals, persons and corporations, and his, their, or its attorneys, agents or employes, from claiming or instituting, or causing to be instituted suit or suits, civil or criminal, against plaintiffs and interveners, or either or any of them, or their or its officers or agents, for the recovery of any damages, overcharges, penalty fines, or penalties thereunder, by virtue of Chapter 15, Title 115 of the Revised Civil Statutes of the State of Texas or any other statute thereof, for failure of plaintiffs or interveners, or either of them, to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said order of July 7, 1916, or for the charging by plaintiffs, or any, or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate

Commerce Commission in said order of July 7, 1916, and further to restrain the said Railroad Commission of Texas, and said Allison Mayfield, Charles H. Hurdleston, and Earle B. Mayfield, and their successors in office, from furnishing to any person or persons, copies, certified or otherwise, of any of said tariffs of rates, circulars, schedules, rules, orders and classifications, or of the orders establishing the same, of the Railroad Commission of Texas, against which relief is herein prayed for, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that plaintiffs and interveners, or either or any of them, their or its officers and agents have not observed, and do not observe and obey said tariffs of rates, circulars, schedules, rules, orders and classifications of the Railroad Commission of Texas herein complained of, where the same are in conflict with the rates and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916, and from requesting or authorizing the Attorney General or any other officer of the State of Texas to institute any proceedings against plaintiffs or interveners, or either or any of them, their or its officers and agents, for failure to obey or for disregarding said tariffs of rates, circulars, schedules, rules, orders and classifications of said Railroad Commission of Texas.

"Witness our hands, in the City of New Orleans, this 20th day of April, A. D. 1917.

(Signed) "DON A. PARDEE,
"Circuit Judge,
"R. W. WALKER,
"Circuit Judge,
"R. L. BATTS,
"Circuit Judge."

Writ of injunction was issued in accordance with the order. This order was not appealed from by the Railroad Commission of Texas or B. F. Looney, Attorney General, or any other party thereto.

The record in the original case of Eastern Texas Railroad Company et al., Plaintiffs, v. Railroad Commission of Texas et al., Defendants, being in the condition thus outlined, and appellants B. F. Looney and the Railroad Commission of Texas being under this injunction, the appellant B. F. Looney filed, on the 20th day of July, 1917, in the District Court of Travis County, Texas, Fifty-third Judicial District, a suit in the name of the State of Texas against appellees herein, original and intervening complainants in said Equity Cause 295, in which he sought to enjoin them from charging in the territory described as "differential territory" the rates prescribed in said Tariff 2-B, which had been filed by the carriers in compliance with the order of the Interstate Commerce Commission of date July 7, 1916, with the Interstate Commerce Commission, and which had become effective on the first day of November, 1916. (See petition, Tr., 15-35, and first amended petition, filed August 7, 1917, Tr., 502-512, in Cause 34,832, State of Texas v. Abilene & Southern Railway Company et al., in the 53d District Court of Travis County, Tex.)

The appellees herein, being the original and intervening complainants in the original cause, thereupon filed as a supplemental or ancillary bill in said cause

on August 4, 1917, a petition enjoining the further prosecution of this suit in the District Court upon the ground that the subject matter thereof was fully embraced in said original Cause 295, and that the prosecution of the same in the State Court was an interference with the jurisdiction of the District Court of the United States for the Western District of Texas, which had already fully attached (see second supplemental bill of complaint, Tr., 1-5), it being further set out that the State District Court had no authority or jurisdiction to determine said cause, for the additional reason that the suit was an action to set aside or construe the order of the Interstate Commerce Commission of July 7, 1916.

While the petition of appellants in the State Court does not specifically mention the order of the Interstate Commission, it nevertheless appears therefrom and is substantially admitted in the brief of appellants here, as was done in argument in the court below, that the substance of the complaint in the State Court is that in the application of rates between points in Texas in what is called "differential territory" the appellee carriers, in their Tariff 2-B, have misconstrued and misapplied the order of the Interstate Commerce Commission, and are thereby charging rates not justified by law.

For rate making purposes the State of Texas is divided into what is called the "common point territory" of greater traffic density, and "differential ter-

ritory," of thinner population and lesser traffic density. Under the orders of the Railroad Commission of Texas common point territory is designated as:

"That portion of Texas lying south of the Amarillo Division of the Chicago, Rock Island & Gulf Railway, but including Amarillo, and east of and including points on a line drawn from Amarillo to Fullerville (running east of Floydada and Crosbyton), on the Panhandle & Santa Fe Railway; Fluvanna, on the Roscoe-Snyder and Pacific Railway; Midland, on the Texas & Pacific Railway; thence (running east of the Sterling City Extension of the Gulf, Colorado & Santa Fe Railway) to San Angelo, on the Gulf, Colorado & Santa Fe Railway and Kansas City, Mexico & Orient Railway of Texas; thence to Menard, on the Fort Worth & Rio Grande Railway; thence to Llano, on the Houston & Texas Central Railroad; thence (running east of Fredericksburg, on the San Antonio, Fredericksburg & Northern Railway, and east of that railway and the Kerrville branch of the San Antonio & Aransas Pass Railway), to San Antonio, on the San Antonio & Aransas Pass Railway and Galveston, Harrisburg & San Antonio Railway; thence via the International & Great Northern Railway to Laredo; thence to Alice and Corpus Christi, on the San Antonio & Aransas Pass Railway; provided that no part of the Wichita Valley Railway west of Sagerton, the Quanah, Acme & Pacific Railway west of Wheatland, the Southplains & Santa Fe Railway, the Texas Mexican Railway, the St. Louis, Brownsville & Mexico Railway south of Sinton or west of Corpus Christi, or the San Antonio, Uvalde & Gulf Railway, Uvalde to Carizo Springs, inclusive, and west of Jourdanton to (except Gardendale)

Crystal City, inclusive, shall be included in common point territory."

Within all that territory west of the common point territory thus described the rules of the Texas Commission prescribe what are known as "differential rates." Illustrating the matter by the first class rates, which will be sufficient for the purposes of this case, the differential rates are made by adding to the maximum common point rates two cents for twenty miles and less, running up to twenty-five cents for 260 miles and more, the common point rates beginning at thirteen cents for ten miles and less, and running up to eighty cents for 245 miles and over. It is provided, however, in the Railroad Commission of Texas plan that these differential rates shall not be added to the common point rates unless the shipment has moved the maximum distance of 245 miles.

The order of the Interstate Commerce Commission of date July 7, 1916, prescribes a different boundary line between the common point and differential territory which is far eastward of the line prescribed by the Railroad Commission of Texas, and, therefore, greatly limits the extent of the blanket or common point territory. The boundary line fixed by the Interstate Commerce Commission is as follows:

"From a point where the St. Louis, San Francisco & Texas Railway crosses the Red River, just north of Hazel, to Acme, on the Fort Worth & Denver City Railway; thence via an air line east of the Quanah, Acme & Pacific Railway through

Sagerton, on the Wichita Valley Railway, to Fullerville, on the Panhandle & Santa Fe Railway; thence west via Roscoe, Snyder & Pacific Railway to Big Springs, on the Texas & Pacific Railway; thence east (immediately) on the Gulf, Colorado & Santa Fe Railway to San Angelo; thence via an air line through Menard, on the Fort Worth & Rio Grande Railway to Llano, on the H. & T. C. Railroad, and immediately east of the San Antonio, Fredericksburg & Northern and San Antonio & Aransas Pass Railways to San Antonio; thence west and south of the San Antonio & Aransas Pass Railway via Smidmore and Sinton to Corpus Christi, on the Gulf of Mexico, except stations on the International & Great Northern Railway from San Antonio to Devine, inclusive."

The order of the Interstate Commerce Commission of July 7, 1916, prescribes rates in differential territory in excess of the maximum rates by differentials beginning at two cents for twenty miles and less, and running up to thirty cents for three hundred miles and over, the rates in common point territory beginning at 23 cents for ten miles and less, and running up to $1.06 for 350 miles and over. There is, however, in the order of the Interstate Commerce Commission no rule such as is provided by the Railroad Commission of Texas that the differential rates shall not be added to the common point rates until after the shipment has moved the maximum distance provided in the common point rate scale. The construction of the order of the Interstate Commerce Commission contended for by the carriers, and set forth in Tariff 2-B,

is that every shipment, state and interstate, pays the added or differential rate, according to the actual distance moved in the differential territory. The construction of the order of the Interstate Commerce Commission contended for by the Attorney General of Texas in his petition in the State Court, and here, is that the added or differential rate is not applied until after the shipment has moved the maximum distance provided in the common point rate scale, which, as stated in the case of first class, is 245 miles. As an illustration, under the Texas Commission rates, if a first class shipment moved wholly within differential territory for a distance of 100 miles, it would be charged the normal or common point first class rate of 44 cents, and the differential rate of 10 cents would not be added, for the reason that the shipment had not moved the maximum distance of 245 miles. Under the order of the Interstate Commerce Commission, such shipment would pay the normal rate of 53 cents plus the differential rate of 10 cents. Again, if under the Railroad Commission's rates a shipment originated a hundred miles east of the differential line in common point territory, and moved a hundred miles into differential territory, it would pay the normal or common point rate only of 70 cents; that is to say, the differential rate for a hundred miles of 10 cents would not be added, for the reason that it had not moved the maximum distance of 245 miles. Under the order of the Interstate Commerce Commis-

sion of July 7, 1916, as construed by appellants, the rate would be made by taking the normal rate of 80 cents for 200 miles, and adding to that the differential rate of 10 cents for 100 miles in differential territory.

While, as stated in the petition in the State Court, appellants do not mention in terms the order of the Interstate Commerce Commission, it is apparent that the basis of the suit in the State Court is that appellees, in their Tariff 2-B, have misconstrued the order of the Interstate Commission by the fact that in paragraph three of the petition (Tr., 20) the Attorney General adopts as the lawful differential territory that prescribed by the order of the Interstate Commission, and that in paragraph four he alleges that—

> "Prior to November 1, 1916, certain class and commodity rates had been prescribed under the law and under the color of the authority of law, as shown in Exhibit No. 1."

Exhibit No. 1 is the scale of class rates prescribed in the order of the Interstate Commerce Commission here involved, and Exhibits Nos. 2 and 3 are the rates also prescribed by the Interstate Commerce Commission. The original petition leaves it somewhat doubtful whether the Attorney General does or does not adopt the differential rates as he does the common point rates prescribed by the Interstate Commerce Commission as the correct rate, and contends merely that the carriers have misconstrued the order in the application, but from the amended paragraph

four in the amended petition (Tr., 503) it is inferable that the contention of the Attorney General is that while the basic or common point rates are those prescribed by the Interstate Commerce Commission in its said order, that the rates in differential territory are the differential rates prescribed by the Railroad Commission of Texas applicable in the manner provided by the rules of that body.

Injunction was asked restraining appellees from charging higher rates than those alleged in his petition to be lawful.

In answer to appellees' second supplemental bill, appellants filed their second supplemental answer (Tr., 37-54), in which it attacks the order of the Interstate Commerce Commission as being void in whole or in part, and suggested that the relief sought by appellees in their second supplemental bill of complaint required the convening of a bench of three judges, as provided in Section 266 of the Judicial Code of 1911.

Hon. Duval West, District Judge for the Western District, being disqualified, and Honorable W. R. Smith, District Judge for the District, being absent therefrom and out of the State, the supplemental bill, with its prayers for injunction, was presented to Circuit Judge R. L. Batts, on August 9th, and in compliance with the suggestion of appellants, Judge Batts called to his assistance Judge Gordon Russell, of the United States District for the Eastern District, and Judge W. R. Smith, District Judge for the West-

ern District, and set the cause for hearing at Austin on September 20, 1917. (Tr., 58-59.) The prayer of said supplemental answer was as follows:

> "Wherefore, for each and all of the reasons and premises above set forth, these defendants pray that all relief prayed for by the plaintiffs be denied, and that said supplemental bill of complaint be dismissed for lack of equity, *and that said order and such portions of the same be set aside.*"

It was agreed that copies of this reply were by mail sent by defendants, appellants herein, to the Attorney General of the United States, and to the Interstate Commerce Commission, but the copies so sent to those parties did not contain the following language, to be found in the concluding sentence of said reply and answer, to wit:

> "and that said order and such portions of the same be set aside,"

which language was omitted from such copies by mistake. (Tr., 566-567.) The copy sent to the Interstate Commerce Commission was received more than five days prior to September 20, 1917.

Neither the United States Government nor the Interstate Commerce Commission filed any answer or other pleading on the hearing, and neither made any appearance therein in any way, nor participated in the hearing in any way. An attorney representing the Interstate Commerce Commission was present in court during the hearing.

The matter was heard by the three judges, and resulted in an order granting the injunction as prayed for; that is to say, that the

> "Defendants (appellants herein) B. F. Looney, Attorney General of the State of Texas, and Luther Nickels, Assistant Attorney General of the State of Texas, their associates and all other persons, be and they are hereby restrained and enjoined from prosecuting said suit 34,832 in the District Court of Travis County, Texas, and from instituting or prosecuting any similar suit in said court or any other court than the United States District Court for the Western District of Texas, and from in any way or manner whatever attempting to interfere or prevent plaintiffs in said second supplemental bill herein from charging the rates prescribed in Texas Lines Tariff 2-B and supplements thereto.
>
> "It is further ordered by the court that all prayers for affirmative relief by said defendants herein be and the same are hereby denied." (Tr., 57-59.)

The opinion was rendered by Judge Batts (Tr., 79-80), and is as follows:

> "After the decision in the Shreveport Case (234 U. S., 342), the Interstate Commerce Commission extended the territorial scope of the order sustained therein to all Texas.
>
> "Thereupon the railroads filed Tariff 2-B, which included intrastate rates fixed, it was claimed, in compliance with the order.
>
> "The validity of the order and the legality of the tariff being questioned, upon an application in this case by the railroad companies for an injunction to restrain penalty suits by the State,

and upon cross-bill praying that the order be declared void, and that the tariff, in so far as it affected state rates, be set aside, Circuit Judges Pardee, Walker and Batts granted the temporary injunction prayed for by complainants, and refused the relief asked by the cross-bill, basing their action as to both matters upon the propriety of maintaining the status until the entire case should be considered and determined upon its merits.

"At the June term of this court an application by plaintiffs for continuation, based principally upon the fact that the matters involved were under further consideration by the Interstate Commerce Commission, was granted.

"Thereafter, the Attorney General of Texas instituted a suit in the District Court of Travis County to prevent the railroads from charging certain of the rates included in Tariff 2-B; whereupon, the railroad companies, plaintiffs or intervenors herein, applied for an injunction to prevent the prosecution thereof. The subject-matter of the State suit is a part of that involved in this case. The jurisdiction of the court with reference thereto has been invoked by the parties plaintiff and defendant, and by interveners. The jurisdiction has been exercised by this court in granting an injunction at the prayer of plaintiffs, and refusing one asked by defendants, and by considering and determining an application for a continuance. The purpose of the three judges mentioned, as expressed in the opinion filed, will be defeated by trial in the State Court. Jurisdiction having been conferred by law, having been invoked by all parties, and having been exercised by the court, its protection is a right and a duty, not limited by Section 266, Judicial

Code. The injunction prayed for by complainants is granted.

"In his answer herein the Attorney General of Texas asks that the rates complained of in the State Court be set aside as not required by the order of the Interstate Commerce Commission. This was before the three judges mentioned. Their judgment with reference thereto was not appealed from or otherwise attacked. But, waiving all questions as to the legality or propriety of modifying their action, our conclusion is that the present status should be maintained until such time as this court may consider all of the grave questions of law, and all of the great mass of facts connected with this complicated and important litigation. The fact that the matters involved are again before the Interstate Commerce Commission, and that their action may affect the rates attacked, furnishes an additional reason for our conclusion. The relief asked by defendants is refused."

Upon the hearing of the cause, the appellants sought to file a trial amendment (Tr., 55-56) by adding paragraphs 13, 14 and 15 thereto, in which they asked an affirmative order to the effect that the temporary injunction issued by Judges Pardee, Walker and Batts, and from which no appeal had been prosecuted to this court, be vacated and set aside in whole, or, in the alternative, that such order be modified to the extent necessary for the granting of all relief prayed for in their answer, and further praying that an order be entered restraining the plaintiffs, appellees here, and each of them, from further applying and charging the differential rates now charged by

them or any differential rates in excess of those prescribed by the Railroad Commission of Texas, and under the conditions so prescribed on shipments moving wholly in intrastate commerce for distances of 351 miles or less, and, in the alternative, that an order be entered restraining plaintiffs, appellees here, from charging the differential rates now charged by them, or any differential rates in excess of the differential rates prescribed by the Railroad Commission of Texas, and under the conditions so prescribed on shipments moving wholly in intrastate commerce for distances of twenty miles or less, pending the final hearing of Equity Cause No. 295; and further praying that an order be entered suspending the operation of the order of the Interstate Commerce Commission of date July 7, 1916, in whole or in part, and that an order be entered suspending said order of the Interstate Commerce Commission with respect to the application of differential rates on rates on interstate shipments moving for distances of three hundred fifty-one miles or less, pending the final hearing of Equity Cause 295. The court permitted the amendment to be filed, with the statement that only that portion of paragraphs 14 and 15 should be considered as might be pertinent to the construction and meaning of the order of the Interstate Commerce Commission. The plaintiffs, appellees here, excepted at the time to the filing or consideration of said amendment, upon the ground that the same was a departure from

the subject-matter of the original suit, and involved an attempt to set aside in whole or in part the order of the Interstate Commerce Commission, which could not have been done without making the United States a party to the proceeding, and serving notice upon the Attorney General.

To the contentions made by appellants herein appellees make the following reply:

1. This court is without jurisdiction to consider this appeal, jurisdiction thereof being vested exclusively in the Circuit Court of Appeals.

2. The jurisdiction of the District Court for the Western District of Texas having been fully invoked by the pleadings, not only of the plaintiffs, but the defendants, in the case of Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., No. 295, that court had the right, in the protection of the jurisdiction thus acquired, to enjoin the prosecution in the State Court of a suit which undertook to deal with the same subject-matter.

3. The affirmative relief sought by appellants attacking the order of the Interstate Commerce Commission could not be granted, for the reason that the United States Government was not before the court and an order of the Interstate Commerce Commission cannot be set aside in whole or in part except upon suit against the Government in the proper district whereof due notice had been given to the Attorney General.

4. The order of Circuit Judges Pardee, Walker and Batts of date the 20th day of April, 1917, not having been appealed from, could not be set aside or annulled, except on final hearing of Equity Cause 295.

5. Insofar as said suit in the State Court, and insofar as the prayer for affirmative relief in appellants' answer herein contend that Tariff 2-B is not in accordance with the order of the Interstate Commerce Commission in the particulars alleged, the Interstate Commerce Commission has twice construed its own order, and twice held that said Tariff 2-B in the particulars attacked were in all things in compliance with the order of July 7, 1916.

6. The injunctive order appealed from, being interlocutory in its nature, and protective of the jurisdiction of the court in the main case, will not be reversed where a plain abuse of discretion is not shown.

7. The court, without the presence of the Government of the United States, represented by her Attorney General, after due notice, had no authority to entertain an attack upon an order of the Interstate Commerce Commission either in whole or in part.

8. The only court wherein the order of the Interstate Commerce Commission could be set aside, either in whole or in part, is the District Court of the United States for the Eastern District of Louisiana, in which district is the residence of the Railroad Commission of Louisiana, upon whose petition the or-

der of the Interstate Commerce Commission of July 7, 1916, was made.

9. Upon the merits, the Tariff 2-B filed with the Interstate Commerce Commission, and effective since November 1, 1916, having twice been construed by the Interstate Commerce Commission, and ordered to remain in effect, becomes a part of the order of the Commission, and cannot be set aside, except by suit against the Government of the United States, with due notice to the Attorney General thereof.

10. Upon the merits, the order of July 7, 1916, has been correctly construed by appellees, and Tariff 2-B installed by the carriers, and effective since November 1, 1916, is in all things in compliance therewith.

11. Insofar as appellants seek to restrain the carriers from the enforcement of Tariff 2-B by temporary injunction, effective until final hearing of Cause 295, they seek to change an existing status. The tariff has been in effect under the order of the Interstate Commerce Commission since November 1, 1916, and it would have been an abuse of the discretion of the trial judges by interlocutory order to have changed such existing status.

ARGUMENT.

First Point.

This court is without jurisdiction to consider this appeal, jurisdiction thereof being vested exclusively in the Circuit Court of Appeals for the Fifth Circuit.

Authorities.

Section 129, Judicial Code.
Section 266, Judicial Code.

Argument.

The decree appealed from is an interlocutory judgment, restraining the prosecution of a suit in the State District Court of the Fifty-third Judicial District, upon the ground that the District Court of the United States for the Western District of Texas, in Eq. No. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., had by pleadings of both parties, and action of court thereon, fully acquired jurisdiction of the subject-matter involved in the suit in such State Court; and, an appeal from an interlocutory order refusing an injunction declining to suspend, in whole or in part, an order of the Interstate Commerce Commission.

Section 129 of the Judicial Code of 1911 is as follows:

"Where, upon a hearing in equity in a District

Court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve, an injunction, or appointing a receiver, to the Circuit Court of Appeals, notwithstanding an appeal in such case might, upon final decree, under the statutes regulating the same, be taken directly to the Supreme Court. Provided, that the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal. Provided, however, that the court below may, in its discretion, require as a condition of the appeal, an additional bond."

The appellants have proceeded upon the theory that an appeal lies direct in this court, under Section 266, which is as follows:

"SEC. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute (or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State) shall be issued or granted by any Justice of the Supreme Court, or by any District Court of the

United States, or by any judge thereof, or by any Circuit Judge acting as District Judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a Justice of the Supreme Court of the United States, or to a Circuit or District Judge, and shall be heard and determined by three judges, of whom at least one shall be a Justice of the Supreme Court or a Circuit Judge, and the other two may be either Circuit or District Judges, and unless a majority of said three judges shall concur in granting such application Whenever such application as aforesaid is presented to a Justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, that one of such three judges shall be a Justice of the Supreme Court, or a Circuit Judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Governor and to the Attorney General of the State, and to such other persons as may be defendants in the suit: Provided, that if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any Justice of the Supreme Court, or any Circuit or District Judge, may grant such temporary restaining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence, and shall be in every way expedited and be as-

signed for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. (It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State Court of proceedings under such statute or order pending the determination of such suit by such State Court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the Attorney General of the State, that the suit in the State Courts is not being prosecuted with diligence and good faith.)"

It is submitted, however, that the supplemental bill of appellees which seeks to restrain the appellants from the prosecution of the suit in the State Court upon the ground that the Federal Court had already acquired full jurisdiction of the subject-matter is not an application for an injunction to suspend or restrain the enforcement, operation or execution of any statute of the State of Texas or the enforcement or execution of an order made by the administrative board or commission acting thereunder pursuant to the statutes of the State. It is true

that appellants by prayer in the nature of a cross-bill in their answer seek to attack the validity of the order of the Interstate Commerce Commission, and to restrain the appellees from applying the rates provided in that order within a given territory, and under this invoked the convocation of three judges, one of whom is a Circuit Judge. Any attack upon an order of the Interstate Commerce Commission by way of interlocutory relief under the Urgent Deficiencies Act of October 22, 1913, requires the convention of three judges, one of whom shall be a Circuit Judge, and accordingly Circuit Judge Batts, when sugestion was made by appellants to that effect, called to his assistance District Judges Smith and Russell. It is apparent, however, that in this proceeding the appellants, by their prayer attacking the order of the Interstate Commerce Commission, could not change the essential nature of the proceeding instituted by appellees which was merely one to prevent litigation in the State Courts of a matter fully embraced in the suit in the Federal Court, invoked by both parties, and then under the control of the court by injunction already issued.

The attack upon the order of the Interstate Commerce Commission, and the affirmative relief asked by appellants that the same be set aside, in whole or in part, could not be heard by the three judges, for the reason that the Government of the United States had no notice thereof. It is true that a copy of the

answer of appellants was sent to the Attorney General of the United States, and to the Interstate Commerce Commission, but such answer as so served contained no prayer except that the bill of appellees be dismissed for lack of equity, the prayer "and that said order and portions of the same be set aside" having been omitted by mistake from the copies of the answer so served. (Tr., 566-567.) No process was issued against the Government or the Interstate Commerce Commission, and neither filed any pleading or took any part in the proceedings.

Appellants, recognizing the futility of their answer, in so far as its attack upon the order of the Interstate Commerce Commission was involved, attempted to file what is termed a trial amendment (Tr., 55-56), adding paragraphs 13, 14 and 15, to their answer, by which, in paragraph 13, it asked an order suspending, in whole or in part, the order of the Interstate Commerce Commission. Appellees objected to the filing and consideration of this amendment, upon the ground that it was a departure from the subject-matter of the original suit, and that an order of the Interstate Commerce Commission could not be attacked without making the United States a party and serving notice upon the Attorney General. District Judge Smith permitted the amendment to be filed for consideration only so far as it involved the construction and meaning of the order of the Interstate Commerce Commission.

It is clear, therefore, that the only matter before the court below was the application to enjoin the appellants from an interference by the process of the State Court with the control of the Federal Court fully invoked and exercised in the proceedings in the original case, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., No. 295 in Equity, pending in the District Court of the United States for the Western District of Texas.

The allegations of appellees' second supplemental bill involved no attack upon any statute of the State of Texas nor did it ask relief against the enforcement or execution of any order made by any administrative board or commission acting under and pursuant to the statutes of the State. The bill merely sets up the pendency of the original suit, the issuance of injunction therein, and alleging, with appropriate showing of facts, that the suit in the State Court involved the construction and application of the order of the Interstate Commerce Commission, all of which were fully embraced in the original suit, and asked that the jurisdiction of the Federal Court be protected.

The entire brief and argument of appellants herein is a substantial admission of the fact that the proceedings in the State Court embraced the same subject-matter as those involved in the suit theretofore filed and then pending in the Federal Court, and the attack as a whole is made on the validity of the or-

der of the Interstate Commerce Commission. That branch of the case was certainly not properly before the court, and the appeal from the interlocutory order granting the temporary injunction against the prosecution of the case in the State Court could only be prosecuted to the Circuit Court of Appeals for the Fifth Circuit.

Second Point.

The jurisdiction of the District Court of the United States for the Western District of Texas having been fully invoked by the pleadings, not only of plaintiffs, but of the defendants, as well as by action of the court thereon in the case of Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., Equity 295, that court had the right in the protection of the jurisdiction thus acquired to enjoin the prosecution in the State Court of a suit which undertook to deal with the same subject-matter.

Authorities.

Fisk v. Union Pacific R'y Co., 10th Blatchford, 518.
Ripley v. San Diego Land Co., 79 Fed., 657.
Union Live Stock Co. v. Riggs, 123 Fed., 312.
State Trust Co. v. K. C. P. & G. R'y et al., 110 Fed., 12.
T. & P. v. R. R. Com. of La., 144 Fed., 65.
French v. Hay, 22 Wall., 250.
Dietzsch v. Huidekoper, 103 U. S., 494.
Gunter v. Atl. Coast Line, 200 U. S., 291.
Julian v. Central Trust Co., 193 U. S., 93.

Morgan v. Sturges, 154 U. S., 256.
Prout v. Star, 188 U. S., 537.
Mo. v. C. B. & Q., 241 U. S., 533.

Argument.

The principle involved in these decisions will hardly be challenged. While Section 265, Judicial Code, provides that the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy, under Section 262 the courts of the United States have power to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law, and it is universally held that where a Federal Court has first acquired jurisdiction of the subject-matter, its control of the case cannot be taken away by proceedings in a State Court, and that injunction may be issued to prevent the prosecution of such suit.

These cases apply with peculiar force to rate cases which are in the nature of proceedings *in rem*.

Central R'y of Ga. v. R. R. Commission of Ala., 161 Fed., 981.
Missouri v. C. B. & Q., 241 U. S., 543.

As a matter of fact, the State Court was wholly without jurisdiction of the suit, and its maintenance could have been enjoined by an original suit, even

though there had been no prior suit pending in the Federal Court embracing the same subject-matter.

Simon v. So. R'y, 236 U. S., 115.

Stated most favorably for appellants, the suit in the State Court involved the interpretation and construction of an order of the Interstate Commerce Commission on a point involving doubt. So that the Interstate Commerce Commission had the exclusive jurisdiction in the first instance to determine the question. As stated by Mr. Justice Brandeis in American Express Company v. South Dakota, 244 U. S., 617:

> "In cases of this nature, where the dominant Federal authority is exerted to affect intrastate rates, it is desirable that the orders of the Interstate Commerce Commission should be so definite as to the rates and territory to be affected as to preclude misapprehension. If an order is believed to lack definiteness, an application should be made to the Commission for further specifications. * * * An order may be as effectively annulled by misconstruction as by avowedly setting it aside."

See, also:

American Tie & Timber Co. v. T. & P. R'y, 234 U. S., 138.
T. & P. R'y v. Abilene Cotton Oil Co., 204 U. S., 426.
B. & O. R. R. Co. v. U. S., 215 U. S., 481.
Robinson v. B. & O., 222 U. S., 506.
Mitchell Coal Co. v. Penn. R. R. Co., 230 U. S., 247.
Morrisdale Coal Co. v. Penn., 230 U. S., 304.

The original bill was filed in the District Court for the Western District of Texas on the 4th day of September, 1916, alleging that the Interstate Commerce Commission had made its order of July 7, 1916, which was attached to the bill prescribing certain rates, rules and practices applicable to commerce between Shreveport and Texas points and between points in Texas, which order, by its terms, became effective November 1, 1916. The complainants, appellees here, alleged that this order required the raising of certain rates on various enumerated classes and commodities applicable between points wholly within the State of Texas; that under the statutes of the State the charging of rates higher than those prescribed by the Railroad Commission of Texas was punishable by severe fines accruing on each shipment to the State of Texas and to individual shippers; that the carriers, in view of the decision of the Supreme Court of the United States in H. E. & W. T. R'y Co. v. U. S., 234 U. S., 342, were under legal compulsion to obey said order of the Interstate Commerce Commission; that tariffs were in course of preparation to that end which would be filed with the Interstate Commerce Commission, and that the Railroad Commission of Texas and B. F. Looney, Attorney General of Texas, would institute prosecutions for penalties, and that individual shippers would institute prosecutions for penalties, and that thereby complainants would be vexed, annoyed and harrassed with a multiplicity of

suits for confiscatory penalties, and temporary restraining order, temporary injunction and permanent injunction was asked against the Railroad Commission of Texas, appellant B. F. Looney, and various shippers, who were impleaded as representatives of a class, restraining them from the institution of suits, civil or criminal, for damages, undercharges, penalties or fines, and further restraining the Railroad Commission of Texas from certifying to the Attorney General or in any manner reporting to the Attorney General any evidence of facts showing that complainants or either of them were not obeying the orders of the Railroad Commission of Texas, and further restraining them from requesting or authorizing the Attorney General to institute any proceedings against plaintiff or either of them for failure to obey the rates, rules, circulars, schedules, orders and classifications of the Railroad Commission of Texas.

Judge Pardee, on September 2, 1916, issued a restraining order substantially in accordance with the prayer, and set down the matter of issuance of temporary injunction before three judges, in accordance with the statute.

Answer was filed by the Railroad Commission of Texas and the Attorney General attacking the validity of the order of the Interstate Commerce Commission for lack of power, for lack of evidence, and alleging that the same had been improperly construed by the complainants, and that under the order purely intrastate rates were not affected.

The hearing on application for temporary injunction having been by consent continued from day to day, was finally set for trial before Judges Pardee, Walker and Batts, on April 4, 1917. Prior to that time, additional parties complainant had been brought in by intervention, and first supplemental bill had been filed, setting up that since the filing of the original bill Tariff 2-B, complaint of which was made in so far as it fixes rates in differential territory, had been filed with the Interstate Commerce Commission, and had become effective on November 1, 1916. The defendants, Railroad Commission of Texas and B. F. Looney, Attorney General, appellants herein, had filed supplemental answer to this first supplemental bill, and tendered specially the issue that said Tariff 2-B was not in accordance with the order of the Interstate Commerce Commission. In said first supplemental bill, in addition to the prayers of the original bill, complainants asked temporary injunction restraining the Railroad Commission of Texas, B. F. Looney, Attorney General, and all other persons, from undertaking to require plaintiffs or either of them to charge the rates prescribed and named by the Railroad Commission of Texas where such rates vary or differ from the rates named in said Tariff 2-B and supplement thereto by the filing of penalty suits against plaintiffs, or either of them, or in any manner, or way, or form, or by any process of law. Said supplemental bill further al-

leged that since the filing of the original bill and the granting of restraining order thereon, the State of Texas and B. F. Looney, Attorney General, had made application to the Suspension Board of the Interstate Commerce Commission to suspend the application of Tariff 2-B prior to the time that it was to become effective by its order, upon the ground that the same was not in accordance with the order of the Interstate Commission, but that said board, its action being confirmed by the Interstate Commerce Commission, had declined to suspend the tariff, except as to certain commodities, to wit, cattle, lignite, wood and tanbark, thereby construing its own order, and holding that said Tariff 2-B was in accordance therewith; that thereafter the Railroad Commission of Texas and appellant B. F. Looney made application to the Interstate Commerce Commission to set aside its said order of July 7, 1916, *in toto,* and to suspend the operation of said Tariff 2-B; that by its order of January 27, 1917, the Interstate Commerce Commission granted a re-hearing in the case, but declined to suspend the tariff pending such re-hearing, thereby for the second time construing its own order and requiring the carriers to maintain said Tariff 2-B until the further action of the Interstate Commerce Commission in the premises.

As stated, the answer of the Attorney General and the Railroad Commission to this first supplemental bill denies that the tariff is in accord with the order.

The special court of three judges at New Orleans, therefore, had before it the Tariff 2-B, as twice construed by the Interstate Commerce Commission, and which had become by the action of the Commission a part of the order itself, with the challenge of the Attorney General that such tariff was not in accordance with the order. In this state of the record, appellant B. F. Looney, in his brief (Tr., 342) upon that hearing said:

> "If it be thought that the granting of affirmative relief of any kind is necessary at this time, we submit that the *status quo* would and should be preserved by denying plaintiffs' application for a temporary injunction, and by granting the prayers of these defendants and of certain interveners suspending the operation, in whole or in part, of the order of the Interstate Commerce Commission, pending either the trial of the cause upon its merits, or pending the final action of the Interstate Commerce Commission upon the application for re-hearing, or for such other time as the court may deem proper, and if thought necessary, suspending also Texas Lines Fonda Tariff 2-B. All necessary parties are before the court. The pleadings present the issues and prayers, and that the court has full power to grant this relief is evident from the provisions of the Act to Regulate Commerce."

It is thus seen that by the statement of the Attorney General himself that every issue sought to be raised in the proceeding in the State Court was embraced in the pleadings in Equity Cause 295, and was then before the three judges.

On the 20th day of April, 1917, the three judges rendered a unanimous decree, as follows:

"This cause came on to be heard on motion for a temporary injunction in the above entitled causes on the 4th day of April, 1917, before the undersigned, Don A. Pardee, Circuit Judge in chambers at New Orleans, and the Honorables R. W. Walker and R. L. Batts, Circuit Judges, called to assist under Section 266 of the Judicial Code, and evidence introduced, and was argued:

"Whereupon, on consideration of the law and the evidence, and the order of the Interstate Commerce Commission of July 7, 1916, and for the reasons filed herewith, it is ordered that a temporary injunction issue as prayed for, enjoining and restraining during the pendency of these actions, or until further order by the court, the defendants, and each of them, and all other officers, individuals, persons and corporations, and his, their, or its attorneys, agents, or employes, from claiming or instituting, or causing to be instituted, suit or suits, civil or criminal, against plaintiffs and interveners, or either or any of them, or their or its officers or agents, for the recovery of any damages, overcharges, penalty, fines, or penalties thereunder, by virtue of Chapter 15, Title 115, of the Revised Civil Statutes of the State of Texas, or any other statute thereof, for failure of plaintiffs or interveners, or either of them, to charge the rates or comply with the rules, orders and classifications of the Railroad Commission of Texas, herein described and complained of, or any or either of them combined, when said rates, rules, orders and classifications are in conflict with the rates and classifications prescribed and authorized by the Interstate Commerce Commission by said order of July 7, 1916, or for the charging by plaintiffs,

or any or either of them, on shipments moving between points in the State of Texas, on and after November 1, 1916, of the rates prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916, and further to restrain the said Railroad Commission of Texas, and said Allison Mayfield, Charles H. Hurdleston, and Earle B. Mayfield, and their successors in office, from furnishing to any person or persons, copies, certified or otherwise, of any of said tariffs of rates, circulars, schedules, rules, orders and classifications, or of the orders establishing the same, of the Railroad Commission of Texas, against which relief is herein prayed for, and from certifying or in any manner reporting to the Attorney General or other officers of the State of Texas any evidence of facts showing that plaintiffs and interveners or either or any of them, the . or its officers and agents, have not observed, and do not observe and obey said tariffs of rates, circulars, schedules, orders and classifications of the Railroad Commission of Texas herein complained of, where the same are in conflict with the rates and classifications prescribed by the Interstate Commerce Commission in said order of July 7, 1916, and from requesting or authorizing the Attorney General or any other officer of the State of Texas to institute any proceedings against plaintiffs or interveners, or either or any of them, their or its officers and agents, for failure to obey or for disregarding saidt ariffs of rates, circulars, schedules, rules, orders and classifications of said Railroad Commission of Texas.

"Witness our hands, in the City of New Orleans, this 20th day of April, A. D. 1917.

(Signed) "DON A. PARDEE,
"Circuit Judge,
"R. W. WALKER,
"Circuit Judge,
"R. L. BATTS,
"Circuit Judge."

This order was not appealed from.

While the Attorney General seems to concede the force of the contentions of appellees that all of the issues raised in his suit in the State Court are fully raised in the suit pending in the Federal Court, he seeks escape by the statement that the defendants in the original cause had been enjoined only from the prosecution of penalties. It is evident, however, from the preceding order that the injunction was not only against the prosecution of penalties, but against the institution of any proceedings against plaintiffs or interveners for failure to obey or for disregarding the tariffs, circulars, schedules, rates, rules, orders and classifications of the Railroad Commission of Texas. If, however, he were correct in the proposition that he was enjoined only from the prosecution of penalties, this would not avail. The issuance of the temporary injunction is not material further than to accentuate the fact that the Federal District Court had not only acquired jurisdiction, but was actively asserting the same.

As a matter of fact, the institution of this suit in the State District Court was obviously in contempt

of the injunction issued by the three judges mentioned, and process for contempt might well have been issued against him and his assistant. The more pleasant and orderly way, however, was by application to the court to restrain this attempted interference with its jurisdiction.

Third Point.

The affirmative relief sought by appellants attacking the order of the Interstate Commerce Commission could not be granted, for the reason that the United States Government was not before the court, and an order of the Interstate Commerce Commission cannot be set aside in whole or in part except upon suit against the Government in the proper district whereof due notice had been given to the Attorney General.

Authorities.

Urgent Deficiencies Act, October 22, 1913.
Commerce Court Act, June 8, 1910.
Illinois Passenger Fare Cases.

Argument.

Under these Federal statutes, it is provided that no suit can be entertained to set aside in whole or in part an order of the Interstate Commerce Commission unless brought in the District Court of the United States of the district of the residence of the petitioner upon whose complaint the order was made, and that the order cannot be set aside, in whole or in part,

in advance of final hearing, unless the Attorney General of the United States has been given notice thereof. In this case, the second supplemental petition of appellees merely asked that the prosecution of the case in the State Court be enjoined. In his answer to this petition the Attorney General does not seek to make the United States Government, or even the Interstate Commerce Commission, a party. True it is that a letter was addressed to the Attorney General, but the copy of the answer which was sent to him, as well as that which was sent to the Interstate Commerce Commission, asked no relief of an affirmative character. It merely prayed that the bill of appellees be dismissed for lack of equity. While this answer does criticise and challenge the correctness of the order of the Interstate Commission in substantially the same terms as does the original first amended and first supplemental answers in the original case, no affirmative relief of any sort was asked, and there was, therefore, no necessity for the appearance of the Government by its Attorney General. Accordingly, the Government was not represented, either by pleading, participation in the proceedings, or otherwise. The fact that in the original case it had been attempted to bring in the Government by unauthorized cross-bill, and that it had filed a special appearance for the purpose of challenging the jurisdiction of the court, could not make it necessary for the Government to take notice of this answer of appellants which did not

seek to implead it in any way, and which asked no relief other than the dismissal of appellees' bill.

The petition of the Railroad Commission of Louisiana filed with the Interstate Commerce Commission March 8, 1911 (Tr., 342), the report of the Interstate Commerce Commission of January 16, 1912 (Tr., 346), the supplemental petition of the Railroad Commission of Louisiana (Tr., 362-373), the order of the Interstate Commerce Commission made thereon June 17, 1915 (Tr., 373), the petition of the Railroad Commission of Louisiana in I. C. C. 8418 (Tr., 385), and the order of the Interstate Commerce Commission of date July 7, 1916 (Tr., 139), as well as the order of the Interstate Commerce Commission of date Jan. 26, 1917 (Tr., 412), all show that the sole petitioner upon whose complaint the order of the Interstate Commerce Commission here involved was made was the Railroad Commission of Louisiana, the residence of which is at Baton Rouge, in the Eastern District of Louisiana, and, therefore, that the District Court of the United States of that district had the exclusive jurisdiction to set aside in whole or in part the order of the Interstate Commerce Commission involved in this proceeding.

Fourth Point.

The order of Circuit Judges Pardee, Walker and Batts of date April 20, 1917, not having been appealed from, could not be set aside or annulled, except on final hearing of Equity Cause 295.

Realizing during the progress of the hearing herein that the contentions made by them in the case pending in the State Court, as well as by their answer to the supplemental bill of appellees involved a collateral attack upon the injunctive order of Judges Pardee, Walker and Batts, appellants attempted to file a trial amendment (Tr., 55-57) which, among other things, contained the following paragraph:

> "By reason of each and all of the premises, these defendants pray that the order heretofore entered in Equity Cause 295 granting plaintiffs and interveners therein an interlocutory injunction be vacated and set aside in whole. In the alternative, they pray that said order be modified to the extent necessary for the granting of all relief prayed for by these defendants in their reply and answer to plaintiffs' second supplemental bill of complaint, and prayed for in this amendment thereto."

In the proceedings before the three judges mentioned the appellant and the Railroad Commission of Texas had, as above set out, fully tendered all of the issues sought to be raised both in the State Court and in their answer to the second supplemental bill of complainants. In that proceeding whereto the United States Government, the Interstate Commerce Commission and the Railroad Commission of Louisiana were parties, appellants had sought to set aside the order of the Interstate Commerce Commission in whole and in part, and had asked affirmative relief

enjoining the application of Tariff 2-B, and contesting the right of appellees herein, complainants in that proceeding, to injunctive relief. The relief prayed for by appellants was denied, and that prayed for by appellees was granted. Appellants had the right under the statute to appeal from that order directly to the Supreme Court of the United States. This they did not see fit to do, alleging in their brief as the sole reason therefor the extent of the record which it would have been necessary to bring up. In the meantime, the tariff which they seek by interlocutory order to suspend has been in effect since November 1, 1916, and is now under consideration by the Interstate Commerce Commission. It certainly was not contemplated by the Federal procedure regulating with minute particularity the manner in which orders of the Interstate Commerce Commission can be assailed that where those assailing such order have failed to utilize the right of appeal given them can thereafter, by way of cross-action in a proceeding of this character, to which neither the United States, the Interstate Commerce Commission, or the Railroad Commission of Louisiana are parties, and of which they have no notice, before different judges overthrow in an interlocutory proceeding the order of the three judges from which they had declined to appeal. It is not believed that the orders of the Interstate Commerce Commission in the face of these statutes can thus be collaterally and successively attacked. Cer-

tainly it would have been an abuse of the discretion of Judges Batts, Russell and Smith, even if they had the jurisdiction, which they did not, in this collateral way to have overthrown the order of the three Circuit Judges which had not been appealed from.

Fifth Point.

In so far as the said suit in the State Court, and in so far as the prayer for affirmative relief in appellants' answer herein seek to contend that Tariff 2-B is not in accordance with the order of the Interstate Commerce Commission in the particulars alleged, the Interstate Commerce Commission has twice construed its own order, and twice held that said Tariff 2-B in the particulars attacked were in all things in compliance with the order of July 7, 1916.

Argument.

Reduced to its last analysis, the contention of appellants herein is that the rates prescribed in Tariff 2-B for application in differential territory are not in accord with the order of the Interstate Commerce Commission. Being fully conscious that the State Court was wholly without authority to overthrow the order of the Interstate Commerce Commission, and yet fearful, if he stated his real contention on the face of the record, the case in the State Court would be removable to the Federal Court, he does not in his petition in the State Court set up the order of the Inter-

state Commerce Commission. He nevertheless alleges in paragraph four of his bill in the State Court (Tr., 21) and in his amended paragraph four (Tr., 503) that prior to November 1st there were in effect certain lawful rates moving in intrastate commerce described in Exhibits Nos. 1, 2 and 3. These are the normal mileage rates applicable in common point territory. They are the rates prescribed by the Interstate Commerce Commission in its order of July 7, 1916, and applied in Tariff 2-B. That this is true is shown by an inspection of the opinion and order of the Interstate Commerce Commission, and is specifically admitted to be true by appellants. (Tr., 510.) Now, in this bill the Attorney General states under oath that these rates "had been prescribed under the law and under the color of the authority of law." It must be taken, therefore, for the purposes of this proceeding, that appellants admit that these rates thus prescribed by the Interstate Commerce Commission are lawful rates, but he advances the contention that the application of these rates and the differential rates in the tariff are not made in accordance with the order, and, in the alternative, that if they are made in accordance with the order, the order is void.

It has been seen that prior to the effective date of the order of the Commission, to wit, November 1, 1916, application was made by various parties, including the appellant B. F. Looney, Attorney General, to

the Interstate Commerce Commission to suspend Tariff 2-B. On October 11, 1916, the Attorney General, stating that he acted as a representative of the State of Texas, and also as Attorney General for the people of the State (Tr., 391-392), sent an extended telegram to the Interstate Commerce Commission protesting against Texas Lines Tariff 2-B, recently filed by the railway companies of Texas to become effective on November 1, 1916, requesting a suspension of these rates, insisting that the order of the Commission did not justify the tariff, making sundry objections thereto, and asking a hearing on application for suspension. A hearing was had before the Suspension Board of the Interstate Commerce Commission on October 19, 1916, and the precise question and the precise contention made by the Attorney General in this case, to wit, that Tariff 2-B, in so far as the application of rates to differential territory was concerned, was not in accord with the order, was presented to the Suspension Board, and argued and overruled. (Tr., 392-412.) Commissioner W. L. Hall participated in the proceedings, and stated that the hearing would be confined to such allegations as the protestants may present respecting any of the rates, rules and regulations contained in Fonda tariff which are alleged to be in contravention of the Commission's order in the Shreveport Case, and to the presentation of any irregularities in any of the filed rates, rules and regulations which are alleged not to be responsive

to the Commission's order. This precise question was presented and argued by Mr. S. H. Cowan, B. F. Looney, Grant S. Maxwell, U. S. Paukett and Mr. Hamlin Palmer. The record (Tr., 395) contains this statement:

> "It was stoutly maintained by the defendant Hon. B. F. Looney, and Mr. S. H. Cowan and others that the differential rates prescribed in said Tariff 2-B affecting the movement of intrastate traffic in the differential territory of Texas were not required or authorized by said order of July 7, 1916. On the other hand, it was contended by plaintiffs and interveners herein that the rates prescribed in said Tariff 2-B were authorized by the said order of the Interstate Commerce Commission, and were necessary to remove the discrimination that said Commission had found and adjudged to exist against Shreveport, and that said Tariff 2-B filed with the Interstate Commerce Commission on September 25, 1916, and the rates therein prescribed were all in strict compliance with said order of the Interstate Commerce Commission, and denied that said tariff and rates were not responsive to the said Commission's order."

The Interstate Commission declined to suspend these tariffs or modify its order, except that it suspended the rates on cattle, lignite, wood and tanbark. (Tr., 407-411.) In statement of Hall, Commissioner, in order of date January 26, 1917 (Tr., 412), it is said:

> "Informal hearing was had October 19 and 20, 1916, on these requests for suspension. At this hearing full opportunity was afforded for the

presentation of objections to the proposed rates. As a result we suspended the operation of items in the tariff naming rates on several commodities, pending an investigation as to the propriety thereof, but a majority of the Commission declined to suspend the tariff in its entirety."

On December 6, 1916, on the application of appellants, B. F. Looney, the Railroad Commission of Texas, and others, a hearing was had before the Interstate Commerce Commission upon the application of said parties and other interested parties to set aside the order of July 7, 1916, grant a re-hearing, and in the meantime suspend the tariff. This the Commission by its report and order of January 26, 1917 (Tr., 412-414), declined to do. It, however, granted the motion for a re-hearing, but held that the order of July 7, 1916, and the tariff under attack here be continued in full force and effect pending the re-hearing and decision thereon. The opinion states:

"The situation now presented is that the State of Texas and the Railroad Commission of Texas, represented by the constituted authorities of that State, wish to have these proceedings re-opened, on the ground that new and material evidence will be submitted, and that the authorities of the State will co-operate with us in bringing about a just and reasonable settlement of this question. The authorities of the State of Louisiana do not object to such a re-opening. The Texas authorities appreciate the fact that as the tariff under attack became effective November 1, 1916, except as to items suspended by us as noted above, we have no power to suspend its operation, but urge

that the same effect, as to intrastate traffic, can be secured by vacating and setting aside our order of July 7, 1916. With this suggestion we are unable to agree. Our order was made after careful consideration, upon the basis of a voluminous record. To vacate this order might have the effect of reinstating many of the discriminations formerly existing which have been shown to be real and material, and of long standing. Argument has been had since the order was entered, but no further evidence in the strict sense of the word has been submitted. In the absence of a showing of error in our report and order we are of opinion that the order should stand pending the further proceedings now contemplated.

"The desirability of co-operation with the State authorities is, however, obvious. Under the circumstances recited above we are of opinion and conclude that these proceedings should be re-opened for further hearing, the order of July 7, 1916, to remain in full force and effect pending such hearing and decision thereon."

It thus appears that the Interstate Commerce Commerce Commission has twice construed its own order, has twice held that the application of rates in differential territory made in Tariff 2-B is in accord with the order of July 7, 1916, and has affirmatively ordered that said tariff remain in effect pending a reinvestigation of the entire matter by the Interstate Commerce Commission. That re-investigation was held, and the matter of rates in differential territory and Tariff 2-B extensively discussed therein (Tr., 415-502) by the witnesses Gentry Waldo, J. B. Payne, L. M. Hogsett, A. S. Stinnett, C. C. Dana, U. S.

Paukett and others. All of this testimony was taken during the months of May and June, 1917, on the reopened Shreveport Case, and on the record thus made argument was had before the Interstate Commerce Commission by al parties during October, 1917, and the matter now rests with the Interstate Commerce Commission for final decision.

As stated by this court in American Express Company v. South Dakota, 244 U. S.:

> "If an order of the Interstate Commerce Commission is ambiguous, application should be made to the Interstate Commerce Commission for further specifications."

The appellant followed this course, presented his application to the Commission, and the Commission has held that the tariff here attacked is in all things in accordance with its order. Certainly the State Court of Texas has no right to construe the order, and no court, even if it had jurisdiction to construe the order, and that jurisdiction had been properly invoked, would, on a preliminary application, hold that the Interstate Commerce Commission was twice in error in construing its order, unless compelled thereto by the plain terms thereof. In addition to this, it is submitted that the entire matter is now before the Interstate Commerce Commission awaiting its final decision. The appellant himself invoked the reopening of the case, and asked that an opportunity be given for the introduction of further testimony.

His prayer was granted, and the case re-opened, the Commission ordering, however, that the tariff and the order remain in effect pending the re-hearing. Appellant accepts that portion of the order which grants the re-hearing, avails himself of the privilege of introducing further testimony, argues the case before the Interstate Commerce Commission during October, 1917, but seeks to set aside by court action that part of the order which requires the tariff to remain effective. It is submitted that until the Interstate Commerce Commission has rendered its decision, the court below was without authority to set aside by preliminary injunction either the tariff or the order. It is thought that the cases of—

T. & P. R'y Co. v. Abilene Cotton Oil Co., 204 U. S., 426;
T. & P. R'y Co. v. American Tie & Timber Co., 234 U. S., 138;
Morrisdale Coal Co. v. Penn. R'y Co., 230 U. S., 304;
B. & O. R. R. Co. v. U. S., 215 U. S., 481;
Atlantic Coast Line R'y v. Macon Grocery Co., 166 Fed., 206;
M. C. Kiser Co. v. Cent. of Ga. R. R., 236 Fed., 573;

fully sustain this position.

Sixth Point.

The injunctive order appealed from being interlocutory in its nature, and protective of the jurisdiction of the court in the main case, will not be reversed where a plain abuse of discretion is not shown.

The granting or withholding of an injunction *pendente lite* ordinarily rests in the sound discretion of the court to which application is made, and unless there has been a plain disregard of the facts or of the settled principles of equity applicable thereto, the exercise of the discretion of that court will not be revised by the appellate tribunal.

R. R. Com. of La. v. T. & P. R'y, 144 Fed., 68.
Kerr v. City of New Orleans, 126 Fed., 920.
Massey v. Buck, 128 Fed., 27.
Vogel v. Warsing, 146 Fed., 949.

These decisions apply with peculiar force to the case at bar. It will be noted that the testimony introduced before the Interstate Commerce Commission and upon which its order was based was not before the trial judges, and the order and the tariff based thereon, therefore, must be tested solely by the facts recited in the opinions of the Interstate Commerce Commission. It is true that certain affidavits and letters were tendered (Tr., 513-520), but it is elementary that an order of the Commission must be tested by the evidence introduced before the Commission, and if additional testimony is to be introduced to overthrow the order, it must be on re-hearing before that body.

L. & P. R'y Co. v. U. S., 209 Fed., 252.
L. & N. R'y Co. v. U. S., 218 Fed., 89.

With comprehensive testimony before it, the In-

terstate Commerce Commission entered its order of July 7, 1916, having twice previously considered the entire subject-matter and made two prior orders in the premises, one of which has been before this court. After two hearings, at each of which appellant B. F. Looney, Attorney General, was present and made arguments, the Interstate Commerce Commission has construed its order and held that the tariff attacked is in accordance therewith. After a hearing lasting several days, before Judges Pardee, Walker and Batts, to whom was submitted the entire record then made before the Interstate Commerce Commission, the exact contentions made herein by appellants were overruled. Circuit Judge Batts, who participated in that hearing, participated also in this, writing opinions in both cases. This court, on the meager record here presented, cannot say that there was an abuse of discretion in the trial judges in granting the injunction against the proceedings in the State Court, and declining to grant the affirmative relief asked for by appellants.

Seventh Point.

The court, without the presence of the Government of the United States, represented by its Attorney General, after due notice, had no authority to entertain an attack upon an order of the Interstate Commerce Commission, either in whole or in part.

Argument.

It has been shown above that the Government of the United States was not made a party to this proceeding in any way by the second supplemental answer of appellants; that the only prayer of that answer, except the prayer that appellees' bill be dismissed for lack of equity, was that "and that said order and such portions of the same be set aside" (Tr., 54); and that the copy of the answer forwarded to the Attorney General and to the Interstate Commerce Commission did not contain the clause quoted, and that, therefore, the United States not having been made a party and neither the Attorney General nor the Interstate Commerce Commission having been notified that the order of the Interstate Commerce Commission would be attacked, were under no obligations to appear, and did not appear, or participate in the proceedings. In this state of the record the trial judges had no power to make any order suspending, in whole or in part, the orders of the Interstate Commerce Commission, and it would have been a gross abuse of power to have attempted so to do. If appellants believed that there was jurisdiction in the court below to attack the order of the Interstate Commerce Commission, and that the same could be done in a cross-action, it was their duty to have made the Government a party, and see to it that the notice required by the Federal statutes was given.

Eighth Point.

The only court wherein the order of the Interstate Commerce Commission could be set aside either in whole or in part is the District Court of the United States for the Eastern District of Louisiana, in which district is the residence of the Railroad Commission of Louisiana, upon whose petition the order of the Interstate Commerce Commission of July 7, 1916, was made.

Argument.

The original petition in Eq. No. 295, Eastern Texas Railroad Company et al. v. Railroad Commission of Texas et al., was not a suit to enforce the order of the Interstate Commerce Commission. The appellants had no legal authority to bring such a suit. Only the Federal authorities have that right. The carriers, appellees herein, having once contested the power of the Interstate Commerc Commission in this very proceeding (H. E. & W. T. R'y Co. v. U. S., 234 U. S., 342), felt that they were entitled to be protected in their obedience to that order against the grave wrongs and injuries with which they were threatened. They sued in the District Court of the United States for the Western District of Texas to enjoin these threatened trespasses. The Railroad Commission of Texas and B. F. Looney, Attorney General, by answer in the nature of a cross-bill, sought to implead the Government of the United States and the Interstate Commerce Commission, and

attack the order of the Commission. Appellees, in their replication, set up that neither the Government of the United States nor the Interstate Commerce Commission was a necessary or a proper party to the proceeding, and that the order of the Commission having been made upon the petition of the Railroad Commission of Louisiana, whose residence was at Baton Rouge, in the Eastern District of Louisiana, the court was without jurisdiction to entertain the cross-bill. The Government and the Interstate Commerce Commission, by special appearances, also set up the lack of jurisdiction in the District Court for the Western District of Texas, asserting that the order of the Commission could only be attacked in the District Court of the United States for the Eastern District of Louisiana, at Baton Rouge. These questions of jurisdiction were presented to the three judges at New Orleans, but were not pased on, though stated to be most serious. In the case at bar, not only does this question present itself, but the further and additional proposition is added that neither the Government of the United States nor the Interstate Commerce Commission were made parties to the proceeding, and had no notice thereof. The statute would seem to be perfectly clear. On the face of this record there can be no doubt that the party upon whose petition the order was made is the Railroad Commission of Louisiana; that the residence of this party is at Baton Rouge, in the Eastern Federal District, and

the statute of October 22, 1913 (38 Stat. at L., 208-219), provides that:

> "The venue of any suit hereafter brought to enforce, suspend or set aside, in whole or in part, any order of the Interstate Commerce Commission, shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made."

It is thought, therefore, that neither under the allegations of the answer and cross-bill in the original case, nor under the allegations of appellants' answer herein, is there any jurisdiction to set aside the order of the Interstate Commerce Commission or the tariff which has become a part thereof, either in whole or in part.

Ninth Point.

Upon the merits, the Tariff 2-B filed with the Interstate Commerce Commission, and effective since November 1, 1916, having been twice construed by the Interstate Commerce Commission and ordered to remain in effect, becomes a part of the order of the Commission, and cannot be set aside, except by suit against the Government of the United States, with due notice to the Attorney General thereof.

Argument.

It has been fully shown above that the Tariff 2-B, application of which in differential territory is attempted to be challenged by appellants in their

prayer for affirmative relief, as not justified by the order of the Commission, has been twice examined and construed by the Interstate Commerce Commission on special proceedings brought with that specific end directly in view, and the Interstate Commission, first, by declining to suspend the tariff in that particular, and, second, by its order of January 26, 1917, specifically requiring the tariff to remain in effect, has thereby made the tariff a part of its order, and if it is a part of the order, it cannot be attacked, except in the court and in the manner prescribed in the statutes above referred to.

Tenth Point.

Upon the merits, the order of July 7, 1916, has been correctly construed by appellees, and Tariff 2-B installed by the carriers, and effective since November 1, 1916, is in all things in compliance therewith.

Argument.

It is somewhat difficult to ascertain either from the original petition of appellants in the State Court, or the amended petition therein, or from the answer in this proceeding, what construction appellants seek to place upon the order of the Interstate Commerce Commission controlling the application of differential rates within differential territory. In the original petition in the State Court the position of appellants seems to be that, accepting the common point or standard rates prescribed by the order of the Inter-

state Commerce Commission, and the interstate territory as prescribed in the order, and also accepting the differential rates prescribed in that order, it is contended that these differential rates can only be applied after the shipment has moved the maximum distance prescribed in the standard or common point scale. Illustrating this by the class tariffs, which is sufficient for the purposes of this case, the order (Tr., 165) prescribes a scale of rates which, as to first class, begins at 23 cents for ten miles and less, and reaches a maximum of $1.06 for 351 miles and over. It also prescribes differential rates to be added to the standard or common point rates mentioned (Tr., 167), which, for first class traffic, begins at two cents for 20 miles and less, and reaches a maximum of 30 cents at 300 miles. Under the method of application of differential rates prescribed by the Texas Commission, the added or differential rates are not added to the standard or common point rates (except in certain excepted cases of lines situated wholly or principally in differential territory), unless and until the shipment has moved the maximum distance prescribed in the Texas Commission class tariffs, which is 245 miles. The class rate differentials prescribed in the Texas Commission rules (Tr., 505) begins at two cents for 20 miles and less, and reaches a maximum of 25 cents at 260 miles. So that under the original petition in the State Court there would be under that theory no addition of differentials un-

til the shipment had moved 351 miles or over, and then the differential prescribed in the interstate order would be added for the additional movement in excess of that distance. Just why appellants conceive that they are at liberty to import the Texas rule, which forbids the application of differential until after the maximum distance has been moved into the Interstate Commerce order while not importing the Texas maximum distance of 245 miles, is not apparent. Certainly there is as much justification for the departure in one case as in the other. In the amended petition in the State Court, however, this theory is changed and it seems to be contended that, still accepting as legal the standard or common point rates of the Interstate Commerce Commission order, it appears to be the theory of appellants that after a shipment has moved the maximum distance of 351 miles, as prescribed in the standard scale of rates of the Interstate Commerce Commission, that then the differentials prescribed by the Texas Commission shall be applied for the added distance moved in differential territory. The order of the Interstate Commerce Commission proceeds upon the basis of equality in rates, and requires that every shipment, state or interstate, shall pay the same differential rate based absolutely upon the actual distance moved in differential territory. To illustrate the application of these differentials, taking for the illustration the first class rate, and selecting for the illustration the

station of Metz, on the Texas & Pacific Railway, 81 miles west of Big Springs, which is the boundary of differential territory: The distance from Shreveport to Metz is 571 miles. The rate under the standard scale is $1.06. The differential for 81 miles is 9 cents, making the total rates from Shreveport to Metz $1.15. The distance from Fort Worth, Texas, to Metz is 348 miles, the distance in differential territory in that case being 81 miles, just the same as in the case of Shreveport. According to the contention, however, of the State, the total distance being less than 350 miles, no differential would be employed, making the rate from Fort Worth to Metz $1.03, by the use of the standard scale, the same as if the entire movement had been in common point territory. The distance from Dietz, Texas, to Metz is 380 miles, and again the distance in differential territory is 81 miles, same as in the case of Shreveport, but according to the contention of appellants, the differential to be applied would only be for the distance in excess of 350 miles, or 30 miles. So, in this case, the differential used would be three cents, making the total rate $1.09. The distance from Denison, Texas, to Metz is 449 miles, and again the distance in differential territory is 81 miles. According to the State's contention, the differential to be used in making the rate from Denison to Metz would be for the entire distance in differential territory, 81 miles, or 7 cents, making the total rate from Denison $1.15, which is

the same as the rate from Shreveport. Thus it is seen that under the State's theory all equity would be destroyed as between the four shipping points named. In each case the shipment moves the same distance in differential territory. Yet Shreveport and Denison would pay a differential of 9 cents, Dallas would pay a differential of 3 cents, and Fort Worth would pay no differential whatever. The order of the Interstate Commerce Commission as construed by appellees and by the Commission itself is that each of the four shipping points mentioned must pay first the standard scale of rates according to distance, and then add to that the differential scale for 81 miles in each case. This is logical and equal, and is the exact thing which the Interstate Commerce Commission order commands.

The theory of differential territory is that the territory is thinly populated, of low traffic density, and high cost of operation, and that, therefore, higher rates are permitted within such territory. The order of the Interstate Commerce Commission requires that each shipment within, into or from differential territory shall bear the differential rate absolutely in accordance with the distance traversed within that territory. Under the State theory, some shipments within that territory would pay for the entire distance traversed while other shipments traveling the same distance within the differential territory would pay no differential whatever. The order of the In-

terstate Commerce Commission was intended to correct, and did correct, this obvious inequality. The underlying principle established by the opinion and order of the Interstate Commerce Commission is that the rates applying for given distances in Texas shall be no less than the rates applying to corresponding hauls between Shreveport and Texas. Therefore, on a shipment moving between two points within the differential territory the rate for a given distance must be the same as that prescribed in the opinion and the order for application for a corresponding distance between Shreveport and Texas. The rates so made between points in differential territory are, however, qualified by the requirement of the order that on shipments moving between Shreveport and differential territory the standard scale of rates shall be increased by applying differentials corresponding to the hauls in differential territory. Therefore, in order to comply with the terms of the opinion and order, an amount must be added to the standard rates between the points in differential territory equal to that prescribed in the differential scale for the distance in differential territory traversed by the shipment, in such case the distance traversed in differential territory corresponding to the total distance traversed by the shipment. Thus the shipment moving entirely in differential territory is charged, in addition to the standard scale, exactly the same amount that a like shipment moving to or from Shreveport would be

charged if it moved the same distance in differential territory, the requirement of the order being that in the consideration and application of these differentials there shall be applied to each shipment, no matter what its origin or destination may be, the differential corresponding to the distance traversed by the shipment in differential territory, leaving out of consideration everything except the distance actually traversed by the shipment in differential territory.

The opinion and order of the Interstate Commerce Commission construed together make it absolutely clear that the Interstate Commission intended to reject and did reject the old rule of the Texas Commission that differentials were not to be applied until the maximum distance had been traversed.

On pages 109 and 110 of the opinion, being pages 166-167 of the Transcript herein, the Interstate Commission discusses "Differentials," and describing the so-called common point and differential territory, fixes the boundary line between these territories, and calls attention to the rule of the Texas Commission which appellants seek to apply. It says:

> "The Texas intrastate common point class rates reach a maximum at 245 miles, and are blanketed beyond. Intrastate traffic originating or terminating near the western boundary of common point territory that moves into or out of differential territory must move a distance of 245 miles before adding the authorized differentials. For example, traffic originati[illegible] 200 miles east of this boundary and moving west

must move into differential territory a distance of at least 45 miles before adding differentials to the maximum common point rates."

Having prescribed just and reasonable class rates between Shreveport and Texas common point territory, and having found that the application of different differential systems on the state and interstate traffic would operate as a discrimination against Shreveport, and having prescribed the standard or common point scale of mileage rates (Tr., 165), the Commission (Tr., 167) says:

> "We are of opinion and find that the present class rates between Shreveport and points in Texas west of the present western boundary of Texas interstate common point territory are, and for the future will be, unjust and unreasonable to the extent that such rates exceed those named as maxima in the above prescribed mileage scale by more than the differentials shown in the following table *corresponding to hauls in differential territory.*"

Then follows the scale of differential rates which may be added to the standard scale of rates appearing at page 165 of the Transcript.

In Section X of the order following the opinion of the Interstate Commerce Commission (Tr., 193) the carriers are required to

> "* * * maintain and apply to the transportation of property between Shreveport, La., and points in the State of Texas class rates (and rates on commodities which are enumerated) not in excess of those contemporaneously applied

by them for the transportation of like property for like distances between points in the State of Texas."

Paragraph five of the order (Tr., 184-185), after prescribing the standard mileage scale for class rates, orders

> "Class rates between Shreveport and points in differential territory in Texas may exceed the maximum rates named by the following differentials in cents per hundred pounds *corresponding to the hauls in differential territory.*"

Then follows the differential scale.

Throughout the entire order and those portions thereof dealing with the various commodities and prescribing the rates for differential territory, the same language is used. For instance:

> "*Machinery* (Tr., 187): Rates to or from points in interstate differential territory in Texas may exceed said maximum by the Class A differentials hereinabove described."
>
> "*Glass Fruit Jars and Bottles:* Rates to and from points in said territory may exceed those herein named for common point territory by the fifth class differentials hereinabove described."

The expressions quoted from the opinion and order of the Interstate Commerce Commission make it absolutely clear that the differentials to be applied in each case are those *corresponding to hauls in differential territory.* There is nothing in the opinion or the order which suggests, even remotely, that it was the intention of the Commission to apply either

the Texas rule that the differentials are not applicable until after the shipment has moved the maximum distance prescribed in the mileage or standard scale or that the Texas Commission scale of differentials should be used. To the contrary, the fact that the Commission, after referring specifically to the Texas rule, makes its own rule that the differentials shall be applied "corresponding to the hauls in differential territory," makes it absolutely certain that the Texas rule was specifically rejected, and that the rules prescribed in Tariff 2-B were intended.

This entire controversy has, as above stated, been submitted in great detail to the Interstate Commerce Commission on two separate occasions. The appellants, properly conceiving that the Interstate Commission was best qualified and indeed had the ultimate jurisdiction to construe its own orders, made the exact point before the Suspension Board of the Interstate Commerce Commission, and the proceedings before that Board (Tr., 391-411), during the month of October, 1916, prior to the effective date of the order, show that it was exhaustively presented to the Suspension Board. In the petition for suspension it was specifically alleged that

> "Application of differential basis within differential territory in 2-B is not authorized by order of the Commission." (Tr., 393.)

This petition states that:

> "In Texas Lines Tariff 2-B, Fonda I. C. C.

33, Item 1005, naming the schedules of class differentials, the application is as follows: 'Class rates to and from or between points in such differential territory shall be made by adding to the rates shown in Items Nos. 1200 and 1225, or re-issues, for the total distance from origin to destination via the route used in determining the rate, the class differentials shown below for the actual distance in differential territory via such route.' The application of differential scales in all commodity rates carried in this tariff are applied in the same manner to, from or between. There is no authority, express or implied, in the opinion or order of the Commission for the application of differentials between points in differential territory."

It is apparent that this specific question was urged before the Suspension Board, and that that board, its action being afterward ratified by the Interstate Commerce Commission, held that the carriers, in said Tariff 2-B, had correctly construed the order, and this holding was repeated by the Interstate Commerce Commission in its order of January 26, 1917. (Tr., 412.) The theory upon which the appellants invoked the jurisdiction of the State Court was that the carriers in their Tariff 2-B had misconstrued the order of the Interstate Commission.

Conceding for the purposes of the argument that the Texas State Court had the right to construe this order, and we think it clear that it did not, it is nevertheless apparent that the Federal Court had, prior to the institution of the proceedings in the State Court, acquired full jurisdiction of the subject-mat-

ter, and, conceding for the purposes of the argument, that the trial judges herein had the power to set aside a tariff which had become an order of the Commission in a proceeding to which the United States Government was not a party, we submit that in a matter within the jurisdiction of the Commission, and which, stated most favorably for appellants, presents an ambiguous order, that the action of the Commission in construing its own order should be binding upon the courts. In addition to this, the entire matter, upon solicitation of these appellants, has been reopened by the Interstate Commerce Commission, voluminous testimony has been taken, and the case during October, 1917, submitted by briefs and oral argument to the Interstate Commerce Commission, and is now pending before that body for ultimate decision, and in this state of the record no court would be justified in setting aside by preliminary order the provision of the tariff here in controversy. It is submitted, however, that on the facts shown the tariff is in strict accord with the opinion and order of the Interstate Commerce Commission.

Eleventh Point.

In so far as appellants seek to restrain the carriers from the enforcement of Tariff 2-B by temporary injunction effective until final hearing of Cause 295, they seek to change an existing status. The tariff has been in effect under the order of the Interstate Commerce Com-

mission since November 1, 1916, and it would have been an abuse of the discretion of the trial judge by interlocutory order to have changed such existing status.

Argument.

The order of the Interstate Commerce Commission is of date July 7, 1916. By its terms it became effective November 1, 1916. By prompt application in Cause 295 appellees obtained protection against interference upon the part of appellants and other State authorities in their installation of the tariff and full compliance with the order of the Interstate Commerce Commission. Temporary restraining order was issued by Judge Pardee on September 2, 1916. The application for temporary injunction was set down for hearing September 28, 1916. On the request of appellants this hearing was postponed until November 8, 1916. (Tr., 62.) At the request of appellants, the hearing was again postponed by order of date November 6, 1916. The order recites:

> "The Railroad Commission of Texas and the Honorable B. F. Looney, Attorney General of Texas, have asked for a postponement of said hearing until the Interstate Commerce Commission shall have heard and acted upon the various petitions to re-open for further hearing and argument the case of Railroad Commission of Louisiana v. Aranses Harbor Terminal Railway Company et al., which has been set for hearing December 6, 1916. It is ordered that the hearing for temporary injunction be postponed until some date subsequent to December 6, 1916, to be

determined and designated by the Honorable Don A. Pardee, Presiding Judge, place of hearing to be designated by Judge Pardee.

"It is further ordered that temporary restraining order granted by Hon. Don A. Pardee on September 2, 1916, be continued in full force and effect until the hearing and determination of said application for a temporary injunction.

"The above is concurred in and agreed to by plaintiffs and above named defendants.

"Fort Worth, Texas, November 6, A. D. 1916.

(Signed by) "Circuit Judges Pardee and Walker."

The tariff in the meantime had become effective November 1, 1916. By order of February 28, 1917, on application of both parties, the hearing on the application for temporary injunction was set for April 4, 1917, at the City of New Orleans. The application was heard, the tariff then being before the court, the appellees asking injunction against interference with its continued application, and the appellants asking affirmative relief against its enforcement.

The hearing having been had on the date set, temporary injunction was, by decree of date April 20, 1917, ordered to issue.

Appellants had the right to appeal from this order directly to the Supreme Court of the United States. They did not see fit to exercise this right. The application for the temporary injunction could have been heard sixty days prior to the date upon which the tariff by the terms of the order of the Interstate

Commerce Commission became effective, but upon appellants' request the hearing was postponed from time to time until April 4, 1917. Since that time it has been in full force and effect. All of the relief which they pray could have been obtained by appeal from the order of April 20, 1917. The tariff, therefore, has been in effect more than fourteen months. Upon the request of appellants the Interstate Commerce Commission has granted a re-hearing in the case wherein the order of July 7, 1916, was made. Voluminous testimony has been taken in that case, and it is now pending before the Interstate Commerce Commission, and may be determined before a hearing hereof.

If any court has power to restrain the enforcement of a tariff thus in effect under the orders of the Interstate Commerce Commission, application to set aside the same being at the same time pending before the Interstate Commerce Commission, which is more than doubtful,

Atl. Coast Line v. Macon Grocery Co., 166 Fed., 206;
Macon Grocery Co. v. Atl. Coast Line, 215 U. S., 501;
M. C. Kiser v. Central of Ga. R'y, 236 Fed., 573,

it would certainly have been an abuse of the discretion of the trial court by interlocutory order to change a status thus long existing to overrule and set aside the order of April 20, 1917, and to anticipate the action of the Interstate Commerce Commission

before which application is pending for the same relief.

Wherefore, appellees pray that the appeal herein be dismissed for lack of jurisdiction, and, in the alternative, that the order of the court below be in all things affirmed.

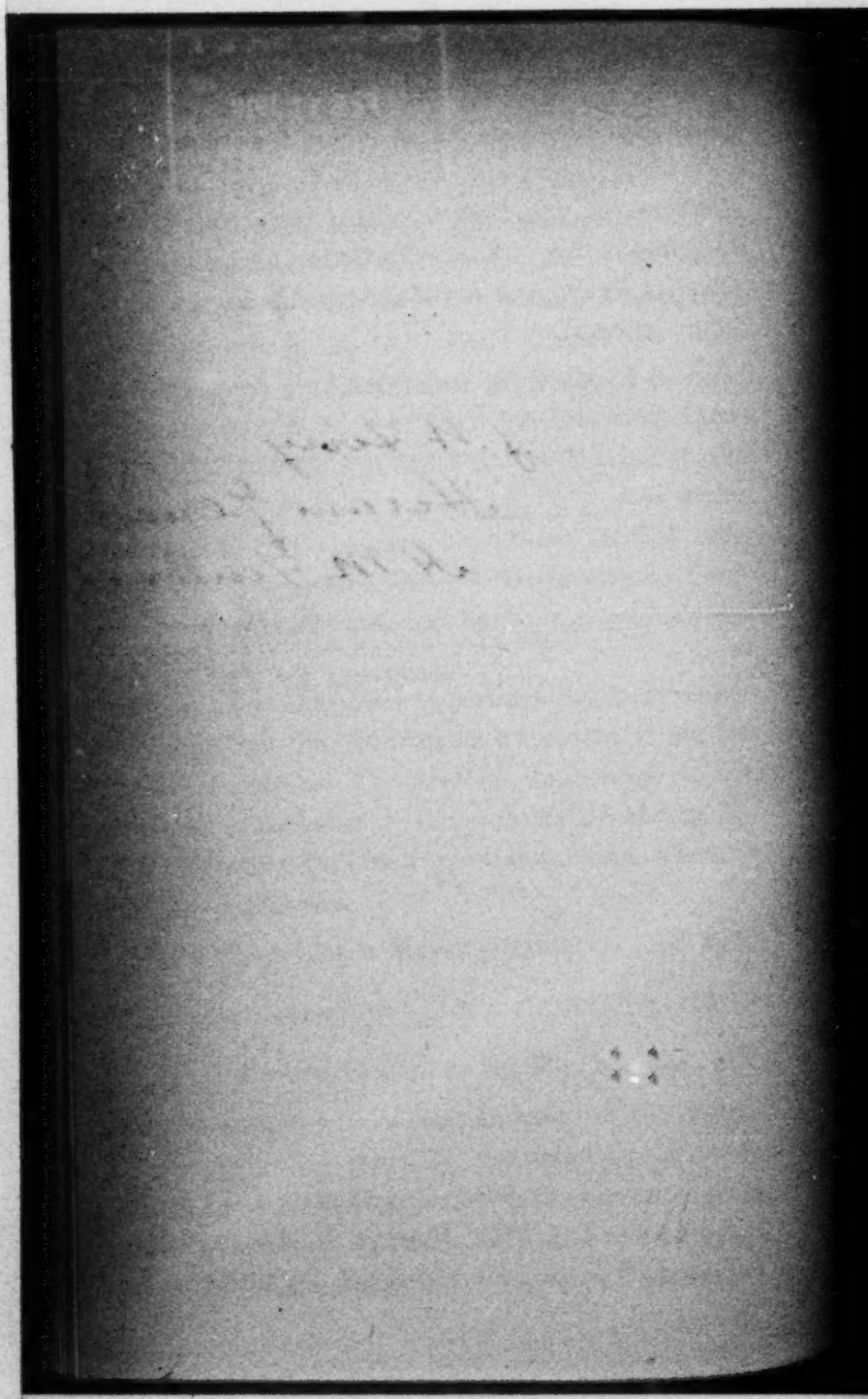
Respectfully submitted,

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No. 756.

In the Supreme Court of the United States

B. F. LOONEY, ATTORNEY GENERAL, AND LUTHER NICKELS, ASSISTANT ATTORNEY GENERAL, OF THE STATE OF TEXAS, APPELLANTS,

vs.

EASTERN TEXAS RAILROAD COMPANY ET ALS., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR APPELLANTS IN REPLY TO BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The following corrections and additions to the "Statement of the Case" as made in the brief for appellees are submitted:

The original bill was filed by some of the appellees herein,—but not by all,—on the 4th day of September, 1916 (Record, pp. 111-112). The Gulf, Texas & Western Railway Company, and some thirty others of the appellees (named on pages 221-223 of the Record) were not parties to the original bill or to the order issued by Judge Pardee at Atlanta, Ga., on September 2, 1916 (Record, pp. 111-138); they became parties to the Federal Court litigation by intervention on October 31, 1916 (Record, p. 221 et seq.). Nor did the original bill operate in their behalf.

After the filing of the original bill by some of the appellees, and before the intervention of the other appellees above mentioned, and on October 14, 1916, the Appellant Looney, Attorney General, and Appellant Nickels, Assistant Attorney General, in the name and

in behalf of the State of Texas, as they were authorized and required by the statutes of the State, filed a suit in the Fifty-third District Court of Travis county, Texas (a State court) against the Gulf, Texas & Western, and each and all of the other appellees named on pages 221-229 of the Record herein, seeking permanent and temporary injunction, etc., against them, and each of them, from charging rates, etc., on intrastate shipments in excess of those prescribed therefor by the Railroad Commission of Texas, it being alleged that such appellees proposed to and would charge such excessive rates. The petition in that case was presented to the district judge of that court, and it was ordered filed by him, and the application for temporary injunction was set for hearing for October 19, 1916, and notice thereof was ordered given such appellees, and was given them. On October 19, 1916, such appellees filed their answer in such cause, traversing the allegations of the State's petition, and alleging that that court had no jurisdiction over the subject matter because of the order of the Interstate Commerce Commission of July 7, 1916. The order of the Interstate Commerce Commission was not mentioned or referred to in the State's petition, it being brought into the case by such appellees by way of defense. On October 19, 1916, such appellees appeared for such hearing on the application for temporary injunction, and such hearing was begun and continued until October 23, 1916,—such hearing including much evidence introduced by all parties and argument thereon,—when an order was duly entered granting the temporary injunction as prayed for by the State. The proceedings in the State court in this case are described, in part (although incorrectly described as to the nature of the proof offered) on pages 234-235 of the Record, paragraph XXXV of the Plea in Intervention of such appellees. An appeal was prosecuted from this order of the State court by such appellees, and the order, upon such appeal, was affirmed by the Court of Civil Appeals for the Third Supreme Judicial District of Texas, and the case, with respect to the proceedings for temporary injunction, is now pend-

ing in the Supreme Court of the State upon application for writ of error filed by such appellees. The case, on its merits, is pending, undisposed of, in the District Court of Travis county, Texas.

As to these particular appellees the case mentioned in the State court includes the question of "Differential Rates" now involved here.

It will be borne in mind that this State court suit is entirely a separate and distinct suit from that described by appellees as cause No. 34,832, which latter cause was filed on July 20, 1917. (Record, p. 5.)

In the second supplemental bill,—upon which the present proceedings arose,—and to which the appellees above mentioned are parties, it is sought to enjoin the further prosecution of said State court suit filed on October 14, 1916, and all other proceedings, as well as cause No. 34,832. (See the prayer of said bill, Record, pp. 14-15.) And the order entered on September 20, 1917, from which this appeal is prosecuted seeks to enjoin the further prosecution of said State court suit filed on October 14, 1916, as well as cause No. 34,832. (See the order, Record, pp. 57-59.)

Appellant Nickels, sued herein as an officer of the State, and duly authorized by the statutes of the State, to prosecute said suit filed on October 14, 1916, as well as said cause No. 34,832, was, for the time, made a party to the litigation in the Federal court by appellees' second supplemental bill filed on August 4, 1917. (See original bill, pp. 111-138; first supplemental bill, Record, pp. 244-249; plea in intervention, Record, pp. 221-238; second supplemental bill, Record, pp. 1-15.)

In their plea in intervention, filed October 31, 1916, the appellees named therein sought an injunction against Appellant Looney restraining him from the further prosecution of said suit filed in the State court on October 14, 1916 (Record, p. 238), but this prayer was not granted in the New Orleans hearing (Record, pp. 100-110), or at any other time up until the entry of the order from which this appeal is prosecuted.

The proposition is advanced by the appellants that the order appealed from is erroneous and void, at least, to the extent that it has the effect of restraining, or staying, the further prosecution of the State court suit filed on October 14, 1916, even though it may be held that in other respects the order is correct, because of section 265, Judicial Code; and the prayer is made that the order, to this extent, at least, be reversed or modified.

The statement is made in appellees' brief that a "substantial admission" is made by appellants that the matter of cause No. 34,832 is embraced within the issues made by the pleadings in equity 295 prior to the filing of the second supplemental bill. This is error. And lest there be further misapprehension upon the point it may be here stated that appellants contend that the issues in equity 295, and yet to be passed upon by the Federal District Court, do not embrace the subject matter of cause No. 34,832.

Appellees' second supplemental bill of complaint was not based upon the sole ground that the District Court of the United States had already acquired jurisdiction of the matters involved in the suit filed in the State court, nor was the relief sought limited to injunction restraining appellants from further prosecuting such suit. (See pages 1-2 of appellees' brief.) But said second supplemental bill proceeded upon the theory, and sought relief upon the ground, that the effect of granting the injunction as prayed for in the State court suit would be "to suspend in part said order of the Interstate Commerce Commission of July 7, 1916," (Record p. 12) and that exclusive jurisdiction "to determine the validity of the orders of the Interstate Commerce Commission, in whole or in part," is vested in the District Courts of the United States, and that the State court was wholly without jurisdiction to determine the issues presented in the State court suit (Record, p. 12); also that the granting of an injunction in the State court suit would subject appellees to a multiplicity of suits by shippers. (Record, p. 13.) The relief prayed for in said second supplemental bill was "that a restraining order be at once granted restraining the said defendants

Looney and Nickels, their associates and all other persons from prosecuting said suit No. 34,832 in the said district court of Travis county, Texas, from instituting or prosecuting any similar suit in said court or any other court other than the United States District Court for the Western District of Texas, and from in any way or manner whatsoever attempting to interfere or prevent these plaintiffs from charging the rates prescribed in said Texas Lines Tariff 2-B and supplements thereto, and that upon hearing hereof an injunction be granted restraining the said defendants and all other persons as prayed for above and that on final hearing, such injunction be made perpetual and for all other and further relief as may be proper in the premises." (Record, pp. 14-15.)

The order of the Interstate Commerce Commission of July 7, 1916, was not made alone upon the petition of the Railroad Commission of Louisiana, as stated on pages 2, etc., of appellees' brief, but substantial parts thereof were made upon the petitions of persons residing within the Western District of Texas and other substantial portions thereof were made upon the Commission's own motion, the subject matter of which arose within the Western District. This is fully alleged in appellee Looney's answer. The portions of his answer set forth on pages 9 to 11 of appellees' brief upon this point were contained in his original answer. These allegations were later amended as follows:

"XXV.

"THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION ARE PROPER, AND MAY BE NECESSARY PARTIES TO THIS CAUSE, AND VENUE THEREFOR PROPERLY LIES WITHIN THE WESTERN DISTRICT OF TEXAS.

"This court, the defendants say, has jurisdiction and venue over the United States and the Interstate Commerce Commission, heretofore made parties defendant herein, and this court should retain jurisdiction and venue thereover, and such parties should be retained herein for the following reasons, towit:

"(I) By reason of all the premises hereinbefore alleged, and by reason of the fact that plaintiff's alleged cause of action is predicated, in large part, upon an order made by the Interstate Commerce Commission, which order is so general and indefinite as to require a construction thereof herein, if not a construction which will materially limit the same, the United States (and the Interstate Commerce Commission) are proper parties to this cause.

"(II) In the event the court should hold that the matters alleged herein by these defendants constitute such an attack upon the order of the Interstate Commerce Commission as is controlled by the terms of the Act of Congress, approved October 22, 1913, entitled 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen, and for other purposes,' then, in that event, the United States (and the Interstate Commerce Commission) are necessary parties.

"(III) Said act of Congress (above referred to) provides that the venue 'of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein':

"(1) 'Is the residence of the party or any of the parties upon whose petition the order was made'; (2) 'Except that where the order * * * is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises'; (3) 'Except' (also) 'where the order does not relate * * * to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office.' Now, in this connection, these defendants say:

"(A) That since the plaintiffs' cause of action as alleged in this cause primarily, or at least to a large extent, is because of and depends alone upon the order of the Interstate Commerce Commission, and since all of said order or at least all of it ex-

ept paragraphs XI and XII thereof, can lawfully be complied with by plaintiffs herein, if they so desire, without suspending or otherwise violating the Texas intrastate rates, rules and laws applicable, this suit was brought, and is being maintained, by plaintiffs to 'enforce' such order and the rights which plaintiffs claim flow therefrom, and, therefore, if under said act of Congress, this court hath no jurisdiction and venue over the United States (or the Interstate Commerce Commission) with respect to the matters pleaded by these defendants, then under said act it hath not jurisdiction or venue over these defendants, or the subject matter with respect to the matters alleged by plaintiffs herein, and in the event the court should hold that it has no jurisdiction or venue over the United States (or the Interstate Commerce Commission) with respect to the allegations made by these defendants then it has no jurisdiction or venue over these defendants or the subject matter of the bill of complaint, and prays, in that event, that the court dismiss the bill of complaint, and deny all other relief prayed by plaintiff.

"(B) These defendants say that said order of the Interstate Commerce Commission was, in large and material parts, made.

"(1) Upon the petition, application, or prayer of some or all of the plaintiffs herein, irrespective of the form or name of such petition, application, or prayer, the residence, or principal place of business, of which plaintiffs were and are within the Western District of Texas, and among such petitioning plaintiffs are: San Antonio & Aransas Pass Railway Company; A. R. Ponder, Receiver of the San Antonio, Uvalde & Gulf Refining Company, each of whose residence and principal places of business is within the Western District of Texas.

"In this connection, it is shown unto the court that if said order means what plaintiffs claim for it, and, if by reason of such order, plaintiffs are entitled to any relief herein, then, as shown by the bill of complaint, and as will be further shown upon the hearing hereof, said order operates to increase the revenues of the plaintiff many millions of dollars annually upon Texas intrastate

traffic, of which increased revenues the plaintiffs whose residence are within the Western District of Texas have received, and will receive, substantial portions.

"It is shown further that some of the plaintiffs, including * * * The San Antonio & Aransas Pass Railway Company voluntarily, made themselves parties * * * to the causes before the Interstate Commerce Commission, and substantially became petitioners therein.

"It is further shown that paragraphs XI and XII of said order were not made upon the petition of the Railroad Commission of Louisiana for said petitioner and did not pray that the carriers be required to desist from the use of the Texas classifications or that they be required to use the 'current Western Classification in effect at the time such traffic moves,' but simply prayed that the carriers not be permitted to use classifications materially differing in their provisions for inter and intrastate traffic. The defendants, therefore, allege that paragraphs XI and XII of said order were made upon the petition, application or prayer of the plaintiff,—or some of whose residences were within the Western District of Texas, irrespective of the form or name of such petition, application or prayer, or was made by the Commission upon its own motion and without a petition.

"It is also here shown to the court that the matters involved in said causes, and the various petitions therein and in said order, arose, in whole or in large part, in and throughout the Western District of Texas.

"As aforesaid, said order, in each and every material respect as construed by plaintiffs in their bill herein, grants to plaintiffs and each of them substantial relief, and defendants allege that each of such portions, in whole or part were made, directly or indirectly, upon the petition, regardless of the form or name thereof, of the plaintiffs, as will appear from the record, and as will be made more fully to appear from the record, and as will be made more fully to appear upon the hearing hereof, and in connection defendants say that the plaintiffs are in possession

true copies of such pleadings as they, respectively, filed in said causes, and of letters, telegrams and other communications which were, in part, taken as pleadings, and they are hereby notified to produce upon the hearing hereof:

"(a) The originals or copies of all pleadings filed by them at any time in any of said causes; (b) the originals, or copies, of all correspondence, letters, telegrams, etc., passing between them, or any of them, or any of their officers, agents, or attorneys and the Interstate Commerce Commission, or any member, officer, agent or examiner thereof in any way pertaining to any of said causes; and (c) the originals, or true copies, of all correspondence, letters, telegrams, or other written communications or documents, passing between them, or any of them, and one George T. Atkins, Jr., since January 1, 1910.

"(2) Large and material portions of said order were not made upon the petition of any party to said causes,—unless upon the petitions of the carriers parties thereto, as above alleged,—and the matters in such portions involved, as well as the matters in such petitions as were before the Commission arose, and now arise in and throughout the Western District of Texas.

"And in this connection, it is alleged, as before, that the principal offices and principal operating offices of many of the plaintiffs 'petitioners in court' herein, are located within the Western District of Texas, and also, that the principal office of those defendants, likewise 'petitioners in court' herein with respect to the matters and prayers set forth in this answer, is within the Western District of Texas.

"In this connection, also, it is shown that rates and classification provisions are dealt with, and attempted to be prescribed, in said order with respect to many articles and commodities of inter and intrastate traffic, which articles and commodities, rates and classification provisions were not involved in or complained of in any petition before the Interstate Commerce Commission,—unless, as aforesaid, the same were involved in petitions, irrespective of form or name,—of some or all of the plaintiffs herein,

including the plaintiffs whose residences are within the Western District of Texas, all of which will appear from the records of said causes before the Interstate Commerce Commission, and which will be made more fully to appear upon hearing hereof.

"(3) Large and material portions of said order were made upon petitions,—irrespective of form or name,—of various persons, chambers of commerce and other similar bodies, whose residences, or principal offices were and are within the Western District of Texas, as will more fully appear from the records in said causes and upon the hearing hereof.

"In this connection, it is shown that among others whose residences are within the 'Western District of Texas' were the following intervenors, complainants and petitioners in some or all of the causes consolidated for the purpose of making the order in question, towit: U. S. Pawkett, Jobbers and Manufacturers' League, Manufacturers' Club, and San Antonio Freight Bureau, whose residences and principal offices were and are at San Antonio, Bexar county, Texas; and Waco Chamber of Commerce, whose residence and principal office was and is at Waco, McLennan county, Texas.

"It was upon the petition of such, and other such petitioners that the tariffs filed by plaintiffs and other carriers to become effective September 1, 1915, and other such tariffs to become effective October 15, 1915, were suspended, and it was upon the petition of such parties that Investigation and Suspension Docket No. 710 and Investigation and Suspension Docket No. 729, were, which causes (Nos. 3913, 3290 and 3418) and all because one cause, and with respect to which consolidated cause the order here involved was issued, and specifically it was upon the petitions of such and other parties that paragraphs I and II of said order were made. Other portions of said order were made, in part at least, upon and in connection with the petitions of such parties.

"(C) Defendants say that the matters covered by the parts of the order made, in whole or part, upon the petitions of the various parties, and without any petition, as described in sub-

paragraph '(B),' next above, are so inseparably mingled with and related to each other and to the whole of said order as to make it impossible for the court to consider the same separately and apart, and that, therefore, the whole of such order must be treated as having been made upon a petition of each and all of such parties.

"(IV) The matters alleged as defenses by these defendants are inseparably connected with the cause of action alleged by plaintiffs and with said order to such an extent as that this court under the general principles and usages of equity, and law, now has juridiction over the United States (and the Interstate Commerce Commission) as proper parties to this cause.

"(V) Wherefore, by reason of each and all of the things in this answer shown, these defendants pray that this court retain jurisdiction over the United States (and the Interstate Commerce Commission), and retain them as parties defendant herein." (Record, pp. 302 to 305.)

It is not true, as stated on page 2, etc., of appellees' brief, that the petition of the Railroad Commission of Louisiana alleged in effect "that the Texas classification by reason of lower carload minimums and other regulations being more favorable to intrastate shippers than the Western Classification applying between Shreveport and Texas operated as a discrimination against the Louisiana shippers." The allegation made in such petition was that "THE SAME CLASSIFICATION" should be required, State and interstate, in order to prevent discrimination. (Record, p. 390.) It was not alleged that the Texas Classification produced the discrimination nor that the Texas Classification was unjust. The allegation was simply that the *difference* in classification, State and interstate, produced the discrimination. Nor is it true, as stated on page 3, etc., of appellees' brief, that the Commission found that discrimination existed by reason of the fact that the Texas Classification was unjust or unreasonable or that it was discriminatory; the finding of the Commission upon this point is "THAT THE PRESENT DIFFERENCE IN

CLASSIFICATION has been, now is, and for the future would be unduly prejudicial to Shreveport." (Record, p. 180.)

On pages 18 to 21 of appellees' brief excerpts from Judge Batts' opinion, rendered in the proceedings at New Orleans, are set forth. Certain important parts of the opinion are omitted, among the omitted portions are the following: Immediately after the following paragraph quoted on page 20 of appellees' brief, towit:

"The law evidently contemplates that when the Interstate Commerce Commission shall have made an order it is ordinarily to be obeyed, until that order is set aside in the manner indicated by law."

Judge Batts said:

"Whether this rule is universal in its application it is not necessary in this proceeding to determine. The Supreme Court has held that the Commission may determine what is a reasonable interstate rate, and what rate must be charged on intrastate business to prevent a discrimination, when both rates are in use. But the authority of the Interstate Commerce Commission with reference to intrastate rates is purely incidental and remedial. The qualities of such an order are radically different from those of an order resulting from the exercise of the legislative function involved in rate-making. To hold that it may, under any circumstances, regulate a State rate, is to carry the rules of interpretation to the extreme limit, in view of the proviso in the first section of the Interstate Commerce Commission Act. It may be held that it has the power to make such orders affecting intrastate rates as are necessary to prevent discrimination; certainly, the authority will not go beyond the necessity. When the Interstate Commerce Commission acts with reference to such a matter, it makes, or should make, the same character of investigation and the same character of determination that would be made by a court if a carrier charging the intrastate and the interstate rates were prosecuted for a violation of the Interstate Commerce Commission Act. Its action would be more nearly judicial than legislative. Whenever such an order is under consideration by a

court, the court would have to determine whether the jurisdiction of the Interstate Commerce Commission had been exceeded; and it would doubtless decline to apply the same rules with reference to the conclusiveness of the action of the Interstate Commerce Commission that obtain when that body is, in the exercise of its established legislative authority, making rates. It would not permit the Interstate Commerce Commission to conclusively determine its jurisdiction by determining the fact of the discrimination upon which its jurisdiction would depend. * * *

"Some of the rates which have been set aside could not have had an appreciable effect on the commerce of Shreveport, or any interstate commerce. Affidavits on file in this court indicate that, in some instances, the results of the order are disastrous to industries within the State. In other instances the effects are grotesque. No reason has been made to appear why it is necessary to supersede the Texas Classifications in order to prevent discrimination.

"The opinion of the Supreme Court is vigorously attacked. In capable, well considered opinions, the State courts of Texas and South Dakota have declined to follow the opinion until reannounced. It is the obligation of the State courts, as it is the duty of the Federal courts, to vigilantly maintain the rights of the States, and to carefully determine the authority of Federal agencies exercising powers claimed to be in derogation of these rights. It is not surprising that State courts should be reluctant to follow an opinion which adds vastly to the power heretofore assumed to be in the Interstate Commerce Commission, and which destroys the power which has been assumed to be in the State rate-making bodies.

"In the Minnesota Rate Case (230 U. S., 352) there is unequivocal recognition of the rights of the States to make intrastate rates. In the Shreveport Case (234 U. S., 358) the right of the Interstate Commerce Commission to enter an order affecting intrastate rates, 'where interstate commerce itself is involved,' is so definitely expressed. In the oral submission of this case the representatives of the Interstate Commerce Commission sug-

gested the intimate relationship between all intrastate and all interstate business, and made it easy to see how the Commission would supersede the State rates in every State, as it had in Texas, and nullify the congressional declaration that the provisions of the act which created the Commission 'shall not apply to the transportation of passengers or property wholly within one State.'

"That Congress could make all railroad rates, or delegate the making to a commission, is not, under the authorities, seriously to be questioned. That it has not exercised this power is made clear by the Minnesota Rate Case; that it has given authority to the Interstate Commerce Commission which indirectly and awkwardly accomplishes the same result would seem to be the Commission's interpretation of the Shreveport Case. But even if the Commission's application of the opinion is too broad, the language of the Supreme Court justifies a part, at least, of the order, and warrants and requires the protection we give the railroad companies." (Record, pp. 76 and 77.)

The nature of the suit filed by appellants in the State court is incorrectly described in pages 24, etc., of appellees' brief. In that suit appellants did not seek to enjoin the rates prescribed in Texas Lines Tariff 2-B. This tariff, nor the order of the Interstate Commerce Commission, were mentioned in the State court suit. The pleadings in that case simply set forth the differential rates prescribed by the Railroad Commission of Texas for distances of 371 miles and less, and asked for an injunction against the charging of differential rates in excess thereof. (Record, pp. 15 to 20, 502 to 512.)

On page 28 of appellees' brief, it is said:

"There is, however, in the order of the Interstate Commerce Commission no rule such as is provided by the Railroad Commission of Texas that the differential rates shall not be added to the common point rates until after the shipment has moved the maximum distance provided in the common point rate scale."

In this statement there is error, for the reason that the order of the Interstate Commerce Commission does not undertake to pro-

scribe differential rates at all except upon interstate shipments moving between Shreveport, Louisiana, and points in differential territory. No such shipment can be made unless it moves for a distance of more than 400 miles and, therefore, no differential rates are charged on interstate shipment at all until they have moved more than 400 miles. This is true, because the distance between Shreveport, Louisiana, and any point on the differential line is more than 400 miles. (Record, pp. 40, 511.) The only portions of the order, towit: Paragraphs 9 and 10, which directly or indirectly refer to or affect intrastate rates, simply require that no higher rates shall be charged on shipments between Shreveport, Louisiana, and points in Texas, than are contemporaneously charged on shipments between points in the State for like distances. (Record, p. 193.)

On page 29, etc., of appellees' brief, it is said:

"That if a first-class shipment, moved wholly within differential territory at a distance of 100 miles, it would be charged 44 cents, and the differential rate of 10 cents would not be added for the reason that the shipment had not moved a distance of 245 miles."

This is not true at all. The first-class shipment for 100 miles, between points in differential territory, would pay 53 cents, which would be exactly the same rate that the shipment would pay if it moved for 100 miles between Shreveport, Louisiana, and a point in Texas.

On page 29 of appellees' brief, it is said:

"Under the order of the Interstate Commerce Commission, such shipment would pay the normal rate of 53 cents plus the differential rate of 10 cents."

What counsel mean by this statement is: That this would be true, if they are permitted to give the order a construction which its language does not warrant. As stated before, the only portions of the order, which prescribe differential rates, are those prescribing interstate rates to be applied on shipments moving between Shreveport, Louisiana, and points in Texas. On such a

shipment, for a distance of 100 miles, a Shreveport merchant would not pay one cent as a differential rate; he cannot under any circumstances be charged differential rates until his shipment has moved for more than 400 miles. Nothing can be found in the order to justify the charging of differential rates where the shipment does not move a distance of at least 400 miles.

On page 31 of appellees' brief, it it said "that appellants' answer herein suggested the necessity of convening a bench of three judges under Section 266 of the Judicial Code." This is true; but it is also true that such an enlarged court was asked for by appellants also under 36 Statutes at Large, 219. (Record, p. 38.)

On pages 13-15 of appellees' brief, it is said, in effect, that the appellant Looney, as Attorney General, invoked the decision of the Interstate Commerce Commission upon the question as to whether or not Texas Lines Tariff 2-B, in so far as the differential rates here involved were concerned, was in compliance with the order of the Commission, and that the Commission has ruled that the tariff conforms to the order. This proposition, we think, involves an erroneous conception of the natue of the proceedings before the Commission as well as the nature of the Commission's rulings thereon. For this reason it is deemed appropriate to show the nature of such proceedings at some length in this connection:

As already stated, the order of the Commission prescribing "differential rates" deals alone with interstate rates applicable between Shreveport, Louisiana, and points in "differential territory" in Texas (Record, p. 185), which rates, as stated, cannot be used at all unless the shipment moves for more than 400 miles because of the geographical location of Shreveport with reference to the "differential line." (Record, pp. 37, 511.) Differential rates on intrastate shipments only become involved or affected when paragraphs "IX" and "X" of the order are enforced, which paragraphs simply prohibit the carriers from charging rates on such interstate shipments which are *higher than* rates charged on like intrastate shipments *for like distances*. (Record, p. 193.) The tariff does not content itself with publishing differential rates

equal to the maxima prescribed in the order for application between Shreveport and differential points (which, as stated, are applicable only when a shipment moves in excess of 400 miles), but it proceeds to publish differential rates, in excess of those prescribed by State authority, for all distances, from 1 mile upwards, for intrastate application. (Record, pp. 37-42.) It is manifest, therefore, that if the carriers had published differential rates for intrastate application for all distances and in double the volume of those prescribed for interstate application, the order of the Interstate Commerce Commission would not have been violated, simply because all that the order requires is that the intrastate rates shall not be *lower* for like distances than the interstate rates. (Record, p. 193). Of course, if this had been done, it would not have been "authorized" by the Commission's order, but if it had been done the order would not have been violated. And if the carriers had published differential rates, first class, of, say, $1.00 for 100 miles, while the interstate differential rate was only 10 cents for 100 miles, there could have been no claim of discrimination against interstate commerce involved in the publication or application of the tariff, and, of course, the Interstate Commerce Commission would not have had any jurisdiction over the part of the tariff which prescribed such intrastate rates. The illustration of *what might have been done* differs from *what was actually done* in the tariff only in degree, because it cannot be questioned that for all distances less than 400 miles, where the shipment touches differential territory, the rates charged on intrastate shipments are *materially higher* than comparable interstate rates for like distances. (Record, pp. 37-42.) It is clear, therefore, that the part of Texas Lines Tariff 2-B which deals with intrastate rates presents no question of discrimination against interstate commerce, or any other feature which gives the Interstate Commerce Commission jurisdiction to construe, enforce, or set aside such portions thereof. The discrimination produced by the tariff is against *intrastate*, and not against

interstate traffic; it is not claimed that the Interstate Commerce Commission has jurisdiction over intrastate discrimination.

This being true, the Interstate Commerce Commission, and its Suspension Board, when the proceedings mentioned in appellees' brief were before them, expressly confined their consideration to those features of the tariff which positively *violated* the order; and, since the vice in the tariff did not constitute a *violation* of the order but consisted in doing something with respect to intrastate traffic which was not authorized by the order but which at the same time did not contravene the requirements of the order, the Commission, in the proceedings mentioned, properly held, in effect at least, that it had no jurisdiction over the portions of the tariff dealing with intrastate rates. And this, we think, is made clear by the record of the proceedings.

In opening the proceedings before the Suspension Board, Commissioner Hall stated that:

"This hearing will be confined to such allegations as the protestants may present respecting any of the rates and rules and regulations contained in the Fonda tariff (meaning Texas Lines Tariff 2-B) *which are alleged to be in contravention* of the Commission's order in the Shreveport cases, and to the presentation of any irregularities in any of the filed rates, rules and regulations which are alleged not to be responsive to the Commission's orders." (Record, pp. 396-397.)

Later during the hearing the following proceedings took place:

"Commissioner Hall: You may proceed, gentlemen.

"Mr. Cowan: Mr. Commissioner, before we proceed, I wish—of course, not to attempt to change the conclusions that have been reached by the Suspension Board and by the Commission with respect to matters to be heard here, but in order that it may be clear upon the record of this hearing—in behalf of a number of representative shippers who are here, to present a formal objection, that the Suspension Board has not heard the questions which affect mostly the shippers; that is, the—pertaining to what the discrimination may be and what unreasonable rates may be

contained in Tariff No. 2-B, and to object to confining the investigation of the Suspension Board on the application for suspension to the question, as we understand it, of whether or not the Tariff No. 2-B contravenes the order of the Commission, and with the suggestion along with that objection that if the tariff, by reason of matters of fact or comparison of rates, really creates discrimination or prescribes rates which are unreasonable, or by the application of a classification which brings about either an unreasonable rate or a discrimination, that those are matters which the shippers desire, of course, to present upon their application for the suspension, but understand it to be the ruling that they are confined, so far as the matters to be presented by them here are concerned, to the question as to whether or not these rates in the tariff are in accord with the rules of the Commission, or whether they contravene the order of the Commission; and that although some other rates or some other standards might have been adopted which were not contrary to the order of the Commission, still there is only the question here to determine what, if any, of these rates contravene the order of the Commission.

"I wish that to go in by way of objection, that the hearing on the subject has been, as we think, too much restricted.

"That is just a mere formal objection, in order that we may not have been supposed to have concurred in the idea that we did not have a right to present all these matters; that is, with due respect and obedience, of course, to the ruling of the Commission and the Suspension Board.

"Commissioner Hall: The objection is noted, but counsel is reminded, in order to remove any misunderstanding that may exist in the minds of those that are here of the closing clause of the opening statement, which was this:

"'This hearing will be confined to such allegations as the protestants may present respecting any of the rates, rules or regulations contained in the Funds tariff which are alleged to be in contravention of the Commission's order in the Shreveport cases, and to the presentation of any irregularities in any of the filed

rates, rules or regulations which are alleged not to be responsive to the Commission's orders.'

"If there are specific items in this tariff which are said to be or claimed to be discriminatory and unlawfully discriminatory, those items can properly be brought to the attention of the board at this stage, but as to the reasonableness of the rates which fall within the maxima prescribed by the Commission's order, in so far as interstate rates are concerned, that it is considered has been passed upon by the Commission and is not reviewable by this board at this time, by these representatives of the Commission at this time, and that will likewise apply to the reasonableness of the intrastate rates which are also contained in the tariff.

"This Commission has not undertaken to pass upon the reasonableness of the intrastate rates. It has found what were reasonable interstate rates; that is, the maxima. It has found that a discrimination existed, a hindrance upon interstate commerce, an obstacle to it, by reason of the maintenance of differing systems of rates for like distances and like traffic, and it has required the carriers to desist from maintaining that unlawful discrimination. That is not indicating to the carriers how they shall remove that discrimination." (Record, pp. 403-405.)

The fact that evidence of the character mentioned by appellees was introduced upon this hearing does not affect the question, because (*first*) the Commission, itself, or through its Suspension Board, as shown, did not consider the matter of the intrastate portion of the tariff, except in so far as was necessary to ascertain whether or not a discrimination against interstate traffic was involved, and (*second*) because the Commission plainly had no jurisdiction over the intrastate portion of the tariff unless such portion involved a discrimination against interstate commerce. No provision of the law can be found which required the carriers to file with the Commission any tariff containing their intrastate rates or giving the Commission any power over any such tariff in the absence at least of a discrimination against interstate traffic. The fact that the shippers of Texas may have thought that the

Commission had authority to suspend the intrastate tariff, in the absence of interstate discrimination, could not confer jurisdiction on the Commission.

The final action of the Commission upon the proceedings before the Suspension Board, and the proceedings before the Commission on December 6, 1916, is embraced in its order of January 26, 1917, wherein it is said:

"The Texas authorities appreciate the fact that as the tariff under attack became effective November 1, 1916, except as to items suspended by us as noted above, we have no power to suspend its operation, but urge that the same effect, as to intrastate traffic, can be secured by vacating and setting aside our order of July 7, 1916. With this suggestion, we are unable to agree. Our order was made after careful consideration, upon the basis of a voluminous record. To vacate this order might have the effect of reinstating many of the discriminations formerly existing which have been shown to be real and material and of long standing. Argument has been had since that order was entered, but no further evidence in the strict sense of the word has been submitted. In the absence of a showing of error in our report and order, we are of opinion that the order should stand pending the further proceedings now contemplated.

"The desirability of co-operation with the State authorities is, however, obvious. Under the circumstances recited above we are of the opinion and conclude that these proceedings should be reopened for further hearing, the order of July 7, 1916, to remain in full force and effect pending such hearing, and decision thereon." (Record, p. 414.)

The order from which the excerpt above is quoted will be searched in vain for anything to justify the statement made, and reiterated, in appellees' brief, to the effect that the order constitutes a finding by the Commission that the intrastate portion of Texas Lines Tariff 2-B is authorized by the order of July 7, 1916. When the excerpt quoted is read in the light of the provisions of the Act to Regulate Commerce, it must become apparent that the

"tariff" mentioned therein was the *interstate* portion of Texas Lines Tariff 2-B; the Commission has never claimed the power to suspend a tariff of intrastate rates, in the absence at least of a showing of discrimination against interstate commerce. By the order of January 26, 1917, the Commission simply declined to suspend its order of July 7, 1916, and this is far from deciding that the intrastate rates contained in Texas Lines Tariff 2-B were authorized by the order. The effect of the proceedings, it seems to us, is simply that the carriers must comply therewith to the extent of removing the discrimination against interstate commerce, when they do this the order is satisfied; if they go further and produce discrimination against intrastate commerce, this is a matter with which the Interstate Commerce Commission has nothing to do.

REPLY TO APPELLEES' "FIRST POINT," THEIR BRIEF, PAGES 41 TO 48.

THE SUBJECT MATTER OF APPELLEES' SECOND SUPPLEMENAL BILL AND OF APPELLANTS' ANSWER THEREUNTO ARE PROPERLY COGNIZABLE BY THE DISTRICT COURT AS ENLARGED UNDER THE PROVISIONS OF SECTION 266 OF THE JUDICIAL CODE AND 38 STATUTES AT LARGE, 219.

The position of the appellants upon this proposition is emphasized by pages 19 and 20 of their brief, upon the motion to dismiss the appeal herein, wherein it is said:

"Now, in this case, it is apparent that in the application for injunction made in appellees' second supplemental bill there is no attempt made to restrain the enforcement, operation or execution of any statute of a State upon the ground of its unconstitutionality, *or to restrain the enforcement or execution of any order* made by an administrative board or commission acting under and pursuant to a statute upon *the ground of the unconstitutionality of such statute.*"

This position is inconsistent with the purposes of Congress as

manifested in the amendment to Section 266 by the Act of March 4, 1913. In C., B. & Q. Ry. Co. vs. Oglesby, 198 Fed., 153, it had been held that an attack upon an order of an administrative board upon the ground of unconstitutionality did not come within the terms of Section 266 as it then existed. The amendment of March 4, 1913, was, evidently, made in view of the decision in the Oglesby case and in order to protect orders of administrative boards. (1st Foster's Federal Practice, p. 397, note 77.) The reason for the amendment, and the effect thereof, is clearly stated in Louisville & Nashville Ry. Co. vs. Railroad Commission, 208 Fed., 35, 37-39, wherein it is held that the amendment of March 4, 1913, extends the procedure requiring three judges to applications to enjoin any order made by a State board or commission which is alleged in the application to be in violation of the Federal Constitution, although the constitutionality of the statute under which the board or commission acts may not be questioned. See, also, Seaboard Air Line vs. R. R. Comm., 213 Fed., 27. This, we submit, is the correct construction of Section 266 as it now exists. This, evidently, was the view of the district court, as enlarged, trying this case, for three judges were assembled and sat in the hearing and decided the case; the three-judge court also entertained the petition for appeal and allowed the same.

But even if this were not true, it still must be clear that the enforcement and execution of the statutes of the State are restrained by restraining the action of appellants thereunder. As pointed out already, in so far as this proceeding is concerned,—there is no claim that the relevant orders of the Railroad Commission of Texas are inherently unconstitutional; if they are unconstitutional, they are so because the statute pertaining to their making and enforcement are themselves unconstitutional because in conflict with the Federal Constitution as enforced by the Act to Regulate Commerce and the orders of the Interstate Commerce Commission pursuant thereof. The statutes of the State command the Railroad Commission to make such orders as it has made and command the appellants to see to it that such orders are obeyed

by taking the appropriate action in the courts. The orders having been made pursuant to the command, the suit whose prosecution is restrained was instituted by appellants in obedience to the command. It must be admitted that the orders sought to be enforced are in accord with the statutes,—as stated, no attack herein is made upon them upon the ground that they go beyond the statute or that they are of themselves void if the statute itself, as applied, is constitutional. If the orders are void and unenforcible, it is only because the statute itself is such. So, it seems to us to be clear that, under any construction of Section 266, we have a case cognizable alone by a three-judge court.

And if so, then Section 266 itself expressly provides that an appeal may be taken directly to this court.

It is suggested, however, that if the appeal is improper upon the grounds alleged, the injunctive-order itself is void because of having been participated in and entered by persons having no authority to do so. L. & N. Ry. Co. vs. R. R. Comm., 208 Fed., 35, 37-39. The order is not the act of the judge of the district court; it purports to be, and is, the joint act of three judges, one of whom was a justice of the Circuit Court of Appeals and another of whom was judge of another judicial district.

It is suggested in the brief for appellees that the pleading of these appellants constitutes simply a "motion to set aside or dissolve the injunction issued by the three judges on April 30, 1917." The extent of the action of the three judges at New Orleans is to be measured, we think, by the terms of the order there entered. We do not believe it was within the province of the three judges at New Orleans to hold in mental reservation, and make effective, an intention which they did not express in the order entered. Nor do we believe it to be within the power of another and different court, composed of different judges, five months later, to find and give authoritative expression of an undisclosed intention held by the three judges at New Orleans. The parties to the litigation, we think, were entitled to take the order to mean what it plainly says. And, when its terms are examined,

nothing therein can be found to prohibit the suit in the State court. As stated, that order simply enjoined the defendants from—"instituting, or causing to be instituted, suit or suits, civil or criminal, against * * * (Appellees here) * * * for the recovery of any damages, overcharges, penalty, fines, or penalties thereunder, * * * for failure of * * * (Appellees here) * * * to charge the rates or comply with the rules, orders and classifications of the Railroad Commission * * * WHEN said rates, rules, orders and classifications ARE IN CONFLICT with the rates and classifications prescribed and authorized by the Interstate Commerce Commission in said order of July 7, 1916." (Record. pp. 109-110.)

If a rate prescribed by the Railroad Commission is not in "conflict" with the rates prescribed by the Interstate Commerce Commission, clearly it was not enjoined by the New Orleans order. The basis of the State court suit was that the rates there sought to be enforced are not in conflict with any rates prescribed by the Interstate Commerce Commission. The question of whether or not they are in such conflict is not at all touched upon in the New Orleans order. The whole matter is without the purview of that order, and, being so, it is difficult to see any basis for the contention that appellants' pleadings constitute simply a motion to dissolve or modify. The subject matter of the pleading is dealt with by the court for the first time in the order appealed from.

But be this as it may, the relief asked in appellants' second supplemental bill is that the enforcement and execution of the statutes of the State, and the relevant orders of the Railroad Commission, made under such statutes, be restrained by restraining the action of these appellants, as officers of the State, thereunder. And this, we submit, presented a matter cognizable alone by the district court as enlarged under Section 266, from which an appeal lies to this court in virtue of the terms of that statute.

We submit, also, that the appeal is proper under 38 Statutes at Large, 219. The United States was made a party defendant long prior to the filing of the second supplemental bill. It had

filed a special appearance contending that the court was without jurisdiction over it by reason of the terms of the venue statute. But the terms of the venue statute, we think, are fully met by the facts alleged as shown in the statement of the case above, which allegations are simply supported by the record upon which the order of the Interstate Commerce Commission was made. And the motion of the United States at the time of the present order was, and still is, undisposed of. When the appellants' answer to the second supplemental bill was filed, copies of it were sent to the Attorney General of the United States and to the Interstate Commerce Commission, together with copies of the order setting the matters for hearing. In response to this, a legal representative of the Interstate Commerce Commission was present and really took part in the hearing. The point made because a part of the last sentence of the answer was by mistake of a stenographer left out of the copies sent to the Attorney General and the Interstate Commerce Commission is extremely technical; there was enough in the copies to put any reasonable, or ordinarily intelligent man, upon notice that an attack was to be made upon the order of the Interstate Commerce Commission and to disclose the exact nature of the attack. Under these circumstances, and since substantial parts of the order of the Interstate Commerce Commission, undoubtedly, were made upon the petition of parties residing within the Western District of Texas, and other substantial portions were made upon the Commission's own initiative, the subject matter of which portions arose in said district, the court as convened certainly had jurisdiction of the attack upon the Commission's order, and, when it refused all relief asked by these appellants, we submit that it entered an order from which an appeal lies directly to this court under 38 Statutes at Large, 219.

REPLY TO "SECOND POINT," APPELLEES' BRIEF, PAGES 48-49.

A. APPELLEES' SECOND SUPPLEMENTAL BILL SOUGHT AN INJUNCTION STAYING PROCEEDINGS IN

A SUIT BY APPELLANT LOONEY, ATTORNEY GENERAL, IN THE NAME AND BEHALF OF THE STATE OF TEXAS, AGAINST SOME THIRTY-ONE OF APPELLEES FILED IN THE STATE COURT ON OCTOBER 14, 1916, AND IN WHICH THE STATE COURT HAD EXERCISED JURISDICTION, LONG PRIOR TO THE TIME WHEN SUCH APPELLEES BECAME PARTIES TO THE LITIGATION IN THE FEDERAL COURT AND LONG PRIOR TO THE TIME WHEN ANY RELIEF WAS GRANTED THEM IN THE FEDERAL COURT.

The Gulf, Texas & Western Railway Company, and each and all of the other appellees here (named on pages 221-222 of the Record), were not parties to the original bill filed on September 4, 1916 (Record, pp. 111-118), nor were they parties to the order entered by Judge Pardee at Atlanta, Ga., on September 2, 1916. (Record, pp. 111-138.) They became parties, by intervention, in the Federal court litigation on October 31, 1916. (Record, pp. 221-238.)

In the meantime, and on October 14, 1916, appellant Looney, Attorney General, in the name and behalf of the State of Texas (as he was authorized and required to do by State statute) filed a suit in the Fifty-third District Court of Travis county, Texas, against these appellees, seeking a permanent and a temporary injunction restraining them from charging rates on intrastate shipments, etc., in excess of those prescribed therefor by the Railroad Commission of Texas. The petition was by the State court ordered filed on October 14th, and the application for temporary injunction therein was by the court on that date set for hearing for October 19, 1916, and notice thereof was given the appellees. On October 19, 1916, the appellees filed their answer in said cause, traversing the allegations of the petition and alleging that the State court was without jurisdiction because of the proceeding before the Interstate Commerce Commission resulting in its order of July 7, 1916. The hearing for temporary injunction was begun on October 19, 1916,—the appellees being present and

contesting,—and the same culminated in an order for temporary injunction as prayed for. The proceedings in the State court are described (although incorrectly described as to the nature of the proof offered) on pages 234-235, paragraph XXXV, of the record herein. The appellees prosecuted an appeal from such order to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, where the order was affirmed, and the case is now pending before the Supreme Court upon an application for writ of error filed by such appellees. The proceedings in that suit being with respect to the issuance of a temporary injunction, the case remains upon the docket undisposed upon its merits.

Now these appellees joined in the second supplemental bill on August 4, 1917, and in the prayer thereof which is clearly broad enough to secure relief by injunction staying the further prosecution of the State court suit now under discussion. (See the prayer, Record, pp. 14-15.) The order appealed from herein is not limited to staying the proceedings in the State court suit filed on July 20, 1917, but is obviously broad enough to enjoin the further prosecution of the suit filed in the State court on October 14, 1916. (See the Order, Record, pp. 57-58.)

We have here, then, an order staying proceedings in the State court, which proceedings were instituted long prior to the filing of any suit in the Federal court in behalf of these particular appellees, and long prior to the granting of any relief of any kind in their behalf by the Federal court. And to this extent, at least, we think there can be no question about the invalidity of the order appealed from.

Section 265, Judicial Code.

Hull vs. Burr, 234 U. S., 712, 723, and cases there cited.

Ex Parte Young, 209 U. S., 123, 163.

Taylor vs. Taintor, 16 Wall., 366, 370.

Harkrader vs. Wadley, 172 U. S., 148.

And we pray that the order be reversed or limited at least to this extent.

B. THE STATE COURT HAD JURISDICTION OF THE MATTERS INVOLVED IN CAUSE NO. 34,832, AND THE RELIEF PRAYED FOR IN APPELLEES' SECOND SUPPLEMENTAL BILL AND GRANTED THEREON WAS PROHIBITED BY SECTION 265 OF THE JUDICIAL CODE.

On pages 40-44 of appellants' original brief herein the proposition is advanced that the order entered at New Orleans on April 20, 1917, is void because the cause was heard, and the order entered outside of the territorial jurisdiction of the district court and because such action was taken without the participation of the judge of the distcirt court, it not having been made to appear that such judge was absent from the district or otherwise unable to act or disqualified, etc., and to such portions of that brief reference is here made.

We desire to state, further, that no order made in Equity 295, up to the time when the appellee's second supplemental bill was filed on August 4, 1917, was made within the territorial jurisdiction of the district court or made or participated in by the judge of said court (see Record, pp. 137-138, for Atlanta Ga., order; Record, pp. 109-110, for New Orleans order).

Appellant Nickels sued as an officer of the State for the first time in appellees second supplemental bill and enjoined by the decree appealed from herein, was in no sense a party to the litigation up until the filing of the second supplemental bill on August 4, 1917.

When the order entered by Judge Pardee, at Atlanta, Ga., of September 2, 1916, and the order entered at New Orleans on April 20, 1917, are examined it will become obvious, we think, that the district court has never attempted to exercise jurisdiction over the subject-matter of the State court suit. These orders nowhere touch the subject.

The grounds for the temporary restraining order issued at Atlanta largely pertained to the matter of Circular 5060, which matter, as stated in appellees' brief, has disappeared from the litigation because Circular 5060 has long since been cancelled. The only

portion of that order which relates, even indirectly, to the matter now before the court is that part which restrains the Attorney General et als., from prosecuting suits for penalties or damages for the charging by the carriers of "the rates authorized and prescribed by the Interstate Commerce Commission in its order of July 7, 1916, on shipments moving between points in the State of Texas" (Record, p. 61). With respect to this order, we desire here to call the court's attention to a matter arising under Section 266 of the Judicial Code: This section provides that before a restraining order may be granted the judge must be of the opinion that "irreparable loss or damage would result to the complainant unless a temporary restraining order is granted," pending the hearing for temporary injunction; now in the order issued there is a finding that "irreparable loss and damage will result * * * unless a temporary restraining order is granted," but, in the nature of things, this finding relates only to the part of the order with respect to Circular 5060—it could not relate to any threatened interference with Texas Lines Tariff 2-B, nor could the judge have had any such opinion with respect to this branch of the case, for the reason that the hearing for temporary injunction was set for September 28, 1916, thirty days, and more, before the order of the Interstate Commerce Commission, or any tariff published thereunder, became effective. There was no allegation in the bill (Record, pp. 111-138) that suits would be filed, on this matter, prior to November 1, 1916, and, in the nature of things, no such suit could have been maintained until after November 1. It occurs to us that the finding and opinion of immediate danger of irreparable loss as to each feature of the controversy is jurisdictional under Section 266, and that, therefore, the portion of the restraining order here in point was void because the order itself showed that no such finding could be properly made. But be that as it may, there is nothing in the restraining order which deals with the subject-matter of the State court suit. If the allegations in the State court suit are correct, then the differential rates which are sought to be there enjoined have not been prescribed or author-

ized by the Interstate Commerce Commission, and, because of this, the relief asked for therein could not trench upon that granted in the restraining order.

Likewise the order entered at New Orleans on April 20, 1917, does not deal with the subject-matter of the State court suit. As stated before the relevant portions of that order simply enjoin the institution or prosecution of suits for *penalties, fines, damages and overcharges* based upon the failure of the carriers to charge the rates prescribed by the Railroad Commission of Texas WHEN SUCH RATES ARE *IN CONFLICT* WITH THOSE PRESCRIBED OR AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION. The State court suit was not for penalties, etc.; it was for injunction alone; and it sought merely to enjoin rates in excess of those prescribed by the Railroad Commission which Commission's rates did not *conflict* with those prescribed by the Interstate Commerce Commission. If the rates sought to be enjoined are not required or authorized by the Interstate Commerce Commission it is difficult to see how they are protected by the New Orleans order; if they are so required or authorized, then the allegations of the petition in the State Court are incorrect and no relief could be granted thereon. The New Orleans order nowhere undertakes to adjudicate, or indicate, that these rates are required or authorized by the Interstate Commerce Commission, and since this matter is expressly left open, and since the injunction there granted is expresly limited to cases of conflict, it is submitted that the order presented no legal obstacle to the filing or prosecution of the case in the State court. Hull vs. Burr, 234 U. S., 712, 723.

If the rates sought to be enjoined in the suit in the State court were not authorized or prescribed by the Interstate Commerce Commission,—and the case proceeds upon this contention,—the jurisdiction of that court to enjoin them is settled, we think, by the decision in American Express Co. vs. Caldwell, 244 U. S., 617.

It is not believed that the cases cited by appellees sustain their contention. We believe it to be true that in each and every one of

the cases, the State court was wholly without jurisdiction of the subject-matter, or the Federal court, previous to the invocation of the State court's jurisdiction, had, by decree, actually exercised jurisdiction over the exact subject-matter of the suit in the State court in such a positive way as that it became necessary to stay proceedings in the State court in order to render the prior decrees effectual. These cases will now be examined.

FRENCH vs. HAY, 22 *Wall.*, 250.—This case, of course, must be read in connection with another of the same style reported at page 231, 22 Wall. The basis of the inapplication of Section 265 to the proceeding is thus stated on page 252:

"The order of the court below, annulling the decree upon which the suit at law in Pennsylvania was founded, was fatal to that action, and entitled Hay to a perpetual injunction, without reference to the result of the prior case."

The jurisdiction of the Federal Court had not only been invoked; it had been positively exercised in such a way as to present an undoubted conflict with what was proposed to be done in the State court.

DIETZSCH vs. HUIDEKOPER, 103 *U. S.*, 494.—The suit in the State court had been properly and actually removed to the Federal court (p. 496); the judgment, nevertheless, was rendered in the State court after the removal and after its decision by the Federal court (p. 497); a new suit was brought in the State court to enforce this prior judgment rendered by the State court after removal (p. 497); the case cited involved a bill, ancillary t the removed case, "and was, in substance, a proceeding in a Federal court to enforce its own judgment" (p. 497). The State court proceedings were stayed, therefore, because this action was absolutely essential to the enforcement of a prior judgment rendered by it disposing of the exact subject-matter. The opinion clearly means that the success of the State court suit would have amounted to a complete reversal and setting aside of the Federal

court's prior judgment. Such is not the case here presented; the granting of the relief asked for in cause No. 34,832 would have been in complete harmony with the New Orleans decree, because that decree, impliedly at least, says that the State and its authorities should be free to enforce intrastate rates which are not in conflict with those prescribed by the Interstate Commerce Commission.

GUNTER vs. ATLANTIC COAST LINE, 200 *U. S.*, 273.—In Humphrey vs. Pegues, 16 Wall., 244, the railroad company had secured a decree (in the Federal Court for the District of South Carolina) adjudging that its properties were permanently exempt from certain taxation and awarding an injunction, which decree was affirmed by the Supreme Court. Many years later the State authorities began suits for the collection of taxes of like kind against the same properties. Thereupon the railroad company filed its bill,—as ancillary to that in Humphrey vs. Pegues, supra,—in the same Federal court, alleging that the tax assessments and the proceedings in the State courts to enforce them, were "in direct violation and disregard of the injunction previously issued" (p. 281)—the prayer of the bill being that the railroad company "be protected in the rights and privileges adjudged in the Pegues case, and be accorded the benefit of the injunction issued in that case, and to that end that the Attorney General, et als., be enjoined, etc." (pp. 281-282). The Supreme Court held that the State authorities were "privies to and bound by the decree in the Pegues case" (p. 289), and then said: "We must determine what was concluded by that decree" (p. 289). It was then held that the decree in the Pegues case "established * * * the *very question* in issue in this proceeding" (p. 290). Having determined this the court then held that Section 265 of the Judicial Code was inapplicable because the relief sought was to render the *prior* decree (in the Pegues case) effective (p. 292). The care with which the court examined the various proceedings in an effort to determine whether or not the exact matter had been adjudicated and finally

disposed of in the Pegues case, and whether or not it was necessary to grant the relief asked in order to enforce the prior decree, argues very strongly, we think, for the proposition that there must be an actual and necessary conflict between the relief sought in a suit in the State court and that already granted in a Federal court before the Federal court is warranted in staying the State court proceedings.

JULIAN vs. CENTRAL TRUST CO., 193 *U. S.*, 93.—By decree in foreclosure in the Federal court the properties of the Western North Carolina Railroad Company had been sold to the Southern Railway Company free from all claims of the parties to the suit (except a first mortgage), (p. 94); in confirming the sale, the Federal court retained jurisdiction "over the cause so far as was necessary to determine all liens and demands to be paid by the purchaser" (pp. 111-112); in suits in the State courts against the Western North Carolina Railroad Company,—to which suits the purchaser of its properties aforesaid was not a party,—certain parties recovered money judgments; executions were issued thereon, which were levied upon the properties so sold and the properties were advertised for sale thereunder. The effect of the proceedings in the State court, and under the authority of its judgments, was an attempt "to annul the order and decree of the Federal court" (p. 109). Says this court: "If the sheriff is allowed to sell the very property conveyed by the Federal decree, such action has the effect to annul and set it aside, because in the view of the State court it was ineffectual to pass the title to the purchaser" (p. 112). Such being the effect of the proceedings in the State court this court held that "a supplemental bill may be filed in the original suit with a view to protecting the prior jurisdiction of the Federal court *and to render effectual its decree*" (p. 112). The opinion in the Julian case makes it plain that the State court proceedings were not only in conflict with what had already been done by the Federal court but that the conflict was of such a nature as absolutely to defeat the prior decree of the Federal court, and

it was thereupon held that Section 265 did not stand in the way of protecting this prior decree. But such is not the case now before the court. Nothing has been done, nor is proposed to be done, in the case in the State court here which conflicts with, or trenches upon, anything done in the Atlanta or New Orleans decrees. The State court suit proceeds in harmony with, not in conflict with, those decrees.

MORAN vs. STURGES, 154 *U. S.*, 256.—By Federal statute "all civil causes of admiralty and maritime jurisdiction" was exclusively vested in the district courts of the United States (276). On July 31, 1891, proceedings were commenced in a State court for the voluntary dissolution of a Tow Boat company, and an order was entered restraining creditors from bringing action and requiring all to show cause why the prayer of the petitioner should not be granted; at the same time an order was entered appointing a receiver, requiring bond, etc.; the papers were filed and the orders formally entered on August 1; on August 1, and on August 3, libels in admiralty were filed in the Federal district court to enforce maritime liens against six vessels belonging to the Tow Boat company; on August 1 the United States marshal seized three of the vessels, and on August 3 seized the other three; on August 4, the receiver appointed by the State court qualified; on the same day the receiver undertook to take possession of the six vessels previously seized by the marshal; thereupon the receiver moved the State court to enjoin the libellants from taking any further proceedings on their libels in the Federal court. The controversy reached this court upon the proposition that the injunction of the State court was an unlawful interference with the proceedings in the Federal court, the counter proposition being that what is now Section 265 prevented the relief against the action of the State court. This court held that the Federal district court had exclusive jurisdiction over the libels, and that since the vessels were actually in the possession of the marshal under process from the Federal court the State court was without jurisdiction to interfere.

Here, then, was a plain case where the State court was actually interfering with the actual exercise of jurisdiction by the Federal court in a matter in which the Federal court had exclusive jurisdiction. But, as pointed out before, such is not the case now before the court. In the first place the State court has jurisdiction over the subject-matter of cause No. 34,832,—American Express Co. vs. Caldwell, 244 U. S., 617; in the second place, if the allegations in the State court suit are correct, there can be no basis for a claim that the relief there sought, if granted, could interfere with the previously exercised jurisdiction of the Federal court or with any proper future order which it may make.

There appears to be a manifest non-sequitur in the argument made by counsel for appellees. They first say that the State court had no jurisdiction of the cause of action there asserted because, they say, the suit was for the interpretation of the order of the Interstate Commerce Commission, and the Commission had exclusive jurisdiction to construe its order. (Brief, p. 50.) They say that application should have been made to the Commission for a construction of the order, and, then, in other places in the brief, they say that the Commission, upon such application, has twice construed the order and the tariff as being in conformity therewith. It is very clearly held in American Express Co. vs. Caldwell, 244 U. S., 617, and in the recent Illinois Passenger Fare Cases, that an order of the Interstate Commerce Commission cannot operate to supersede State-made rates unless the order itself definitely declares its purpose and the respects in which such purpose is to be accomplished. As shown in the "Statement of the Case," above, the Commission has never held that the Differential Rates here involved are authorized or requied by the order; all that it has held, or can lawfully consider or decide, is that this portion of the tariff is not in positive contravention of the order because it does not name intrastate rates which are *lower* than the interstate rates for like distances. If the intrastate rates so named are *higher* than the interstate rates, all pretense of discrimination against interstate commerce has disappeared,

and the Commission, obviously, has no further concern in the intrastate portion of the tariff, and for this reason the Commission was not called upon to decide that the "Differential Rates" were not authorized by the order. The order simply required a parity; if the carriers,—as they have done,—went further and installed intrastate rates which are materially higher, mileage considered, than the interstate rates, their conduct, in this respect, simply presents a controversy between the State and the carriers, in which controversy the Interstate Commerce Commission is not concerned. And for this reason, we think, it cannot be said that the Commission has ever decided that the Differential Rates charged on intrastate shipments for distances of 400 miles or less are authorized by the order. But if we are mistaken in this, and if the Commission has so decided, it is not believed that it is within the power of the Commission thus to regulate intrastate rates as such, or thus to place a retroactive construction upon the order which its plain terms will not bear. For let it be remembered always that the only portion of the order which prescribes Differential Rates, or at all refers thereunto, names rates exclusively for certain interstate application; and the only portions of the order which refer to, or in anywise affect, intrastate rates are paragraphs "IX" and "X" thereof, which simply prohibit the charging of intrastate rates *which are lower* than the interstate rates for "like distances." In other words, if 37 cents per 100 pounds, first class, are charged on both State and interstate shipments for distances of 50 miles, the plain terms of the order are complied with (Record, p. 184, paragraph V; 193, paragraphs IX and X); but the carriers are charging 42 cents, first class, on intrastate shipments, and only 37 cents on like interstate shipments, for distances of 50 miles. Nothing can be found in the order to justify this discrimination against intrastate traffic; but while this discrimination exists, no discrimination exists against interstate traffic. Of course, the Act to Regulate Commerce gives the Interstate Commerce Commission no power over such discrimination against intrastate traffic; it is concerned alone with inter-

state discrimination; this being true, that Commission, obviously, has no control over the intrastate tariff and could not construe it or modify it in any binding sense; and this being true, that Commission not only does not have "exclusive jurisdiction" over the question of the construction of the portion of the tariff naming intrastate rates but it has no jurisdiction over it at all so long as it does not name State rates which are *lower* than comparable interstate rates. As a matter of fact and law, the filing of the portion of the tariff naming intrastate rates was a mere gratuity, an act which was not compelled by any requirement of the order or of the law. Because the terms of the order afford no justification for charging intrastate rates which are *higher* than the interstate rates for like distances, the State court had ample power to compel obdience to the State-made rates. American Express Company vs. Caldwell, 244 U. S., 617. The claim of the carriers of the right to charge intrastate rates which are *higher*, mileage considered, than the interstate rates, is based upon an implication sought to be drawn from the order and the report, which implication, if allowed, operates, undoubtedly, to modify the express terms of the order. That the claim is based upon such an implication, and not upon the terms themselves, is pleaded at some length in the second supplemental bill (Record, pp. 6-10), and the entire argument under the "Tenth Point," pages 78-89 of appellees' brief, is devoted to an effort to show that such "implication" is well based. In the controversy recently decided by this court in the Illinois Central R. R. Co. vs. Public Utilities Commission of Illinois (Illinois Passenger Fare Cases), the carriers claimed the right to supersede State-made rates upon the authority of "implications" to be drawn from an order of the Commission, and that, too, where the language of the order was clearly susceptible of such a construction (the contrary being true in the present case), but one of things which this court very clearly held was that "implications" to be drawn from the order were wholly impotent to confer the authority to ignore the intrastate rates. Likewise in American Express Co. vs. Caldwell, 244 U.

S., 617, the carriers planted themselves upon an "implication," or "construction," which this court expressly said might be drawn from the order, and upon such "implications" the carriers sought to supersede State rates in non-competitive territory; and there again this court held that "implications" furnished no such authority. As stated, the orders in both the cases cited contained language easily susceptible of the construction claimed by the carriers; but the plain terms of the present order, if taken literally, are not susceptible of the construction upon which the relief granted herein rests. As stated, and reiterated, the terms of the order are satisfied when the carriers charge absolutely equal rates for equal distances, State and interstate; this is what the order says; if it is to be held to say more, something must be imported by implication, and when this is done the order is made to mean something contrary to its literal significance. And this, too, in order to supersede State rates otherwise valid; upon the authority of the Illinois Passenger Cases we say that this cannot be done by the carriers, the court, or the Commission in a retroactive opinion. We submit that the order must be construed to mean what its terms imported at the time it was made. And so construed, there being no definite requirement compelling the superseding of State rates, it afforded no authority for what has been done, and, therefore, the State court had full authority to enforce the non-conflicting order of the Railroad Commission.

It has already been demonstrated, we think, that nothing which might have been done in the State court, in cause No. 34,832, could have invaded the field of operation of the Atlanta or New Orleans order, because of the fact that such orders only sought to protect the carriers in charging rates which are authorized by the order of the Interstate Commerce Commission, which authority, as has been recently held, must have been given in plain and unmistakable terms by the order itself. But if we are correct in saying that the order of the Commission does not definitely contain authority for the superseding of the State rates, in the respects here involved, then nothing which might have been done by the

State court could have interfered with anything which the Federal district might in the future properly do in the litigation before it. It is not within the jurisdiction of the Federal court to enforce a nullity, or an instrument which shows itself to be a nullity. A nullity, as we understand the law, may be attacked anywhere, at any time. Rates, otherwise valid, were offered to the State court for enforcement; a nullity is interposed to render the rates invalid and as a defense; it is not believed that the otherwise undoubted jurisdiction of a court can thus be ousted.

But if it be held that the Federal court had exclusive jurisdiction of the matter involved in the State court suit, this presents no reason why this particular portion of the tariff should have been enforced by the order appealed from. It is very clear that this particular was not considered or disposed of by the New Orleans order (Record, pp. 109-110); the matter of appellees' second supplemental bill required a new order by the court, and we think the decision in the Illinois Passenger Cases, as well as that in American Express Co. vs. Caldwell, supra, is conclusive against the right of the appellees to the relief sought and obtained, and conclusive of the right of appellants to at least a part of the relief sought by them in paragraph XIV of their answer. (Record, p. 55.)

REPLY TO APPELLEES' "THIRD POINT," THEIR BRIEF, PAGES 59-61.

A. THE UNITED STATES WAS BEFORE THE COURT IN SUCH A WAY AS TO WARRANT THE GRANTING OF THE AFFIRMATIVE RELIEF PRAYED BY APPELLANTS.

As shown in the "Statement of the Case" in this brief and on page 28 of appellants' original brief, the United States had been made a party to the litigation in the Federal court in September, 1916, and had filed its special appearance prior to April 18, 1917. Copies of appellants' answer to the second supplemental bill were in due time forwarded to the Attorney General of the

United States together with copies of the order setting the bill and answer for hearing on September 20, 1917, and the same were received by him. Some point is sought to be made upon the proposition that a clause of the last sentence of the answer was omitted from the copies sent to the Attorney General through error of a stenographer. But as shown the copies as actually sent specifically alleged wherein the order of the Commission was void (Record, pp. 45-54), and thereupon it is alleged that the order "should be set aside in whole and in part." (Record, p. 54.) This, we think, would put any reasonably intelligent man upon notice that the order was to be attacked and its suspension asked and require him to take notice thereof.

We know of no statute or rule requiring copies of the answer to be served upon the Attorney General at all. Furthermore, the district court has long since adopted the practice obtaining in the State court of Texas. Rule 1 of the district court provides:

"The rules of proceedings prescribed by or under the authority of the laws of Texas, when they do not conflict with a law of the United States, or of the Supreme Court of the United States, or a rule of the Circuit Court of Appeals for the Fifth Judicial Circuit of the United States, or of this court, are adopted." Harris' Annotated Court Rules, page 209.

There is no rule of such district court (Harris' Annotated Court Rules, pages 209-214), or of the Circuit Court of Appeals (Harris' Annotated Court Rules, pages 167-180), which conflicts with the Texas practice upon this matter, and, as stated, we know of no rule of this court, or of any statute, which conflicts therewith. Now the Texas practice is that a party who has once been served in a case, and which has made an appearance of any kind, must take notice of all papers thereafter filed and of all orders thereafter entered in the litigation. Under the Texas practice, if an amendment, or supplemental pleading, setting up new matter, is filed in vacation and notice thereof not given, the failure to give the notice may operate as a cause for a continuance, but the parties are required to take notice of the same, and it is not a nullity.

B. IT WAS NOT NECESSARY FOR THE UNITED STATES TO BE BEFORE THE COURT IN ORDER FOR THE PRAYERS OF APPELLANTS FOR AFFIRMATIVE RELIEF TO BE SUBSTANTIALLY GRANTED.

As shown on page 29 of our original brief, paragraph XIV of the answer reads in part as follows:

"These defendants pray that, by reason of each and all of the premises, this court now enter its order restraining plaintiffs (appellees here) and each of them from further applying or charging the differential rates now charged by them, or any differential rates in excess of those prescribed therefor by the Railroad Commission of Texas and under the conditions so prescribed on shipments moving wholly in intrastate commerce for distances of 351 miles or less, pending the final hearing of Equity No. 295 or the further orders of this court.

"In the alternative they pray that this court now enter its order restraining the plaintiffs from charging the differential rates now charged by them, or any differential rates in excess of the differential rates prescribed therefor by the Railroad Commission of Texas, and under the conditions so prescribed, on shipments moving wholly in intrastate commerce for distances of twenty miles or less, pending the final hearing in Equity No. 295 or the further orders of this court." (Record, p. 55.)

Note.—The basis for the alternative prayer with respect to twenty-mile shipments is shown on pages 95-100 of appellants' original brief herein.

The *power* of the court to grant this relief to appellants, even though it be held that the United States was not properly before the court, in view of the facts shown, is, we think, conclusively established by the decision and opinion in the Illinois Passenger Fare Cases recently decided. The *right* of appellants to have this prayer granted is, we think, sufficiently discussed in our original brief and in other portions of this reply brief.

REPLY TO APPELLEES' "FOURTH POINT," THEIR BRIEF, PAGES 61-64.

A. THE DENIAL OF RELIEF TO APPELLEES, OR THE GRANTING OF THE AFFIRMATIVE RELIEF PRAYED BY APPELLANTS IN PARAGRAPH XIV OF THEIR ANSWER, AND IN OTHER PORTIONS OF THE ANSWER, WOULD NOT HAVE HAD THE EFFECT OF SETTING ASIDE OR MODIFYING THE NEW ORLEANS ORDER OF APRIL 20, 1917.

The correctness of this proposition is established, we think, by the express terms of the New Orleans order. This is true because,—as pointed out in various portions of our original brief and in this brief,—the New Orleans order did not purport to, and did not, cover the matter of cause No. 34,832 or the relief granted appellees in the order appealed from herein. The basis of cause No. 34,832, in the State court, is that the State rates there sought to be enforced do not conflict with any portion of the order of the Interstate Commerce Commission, and that the rates being charged were not authorized by the Commission, and, if so, it is very clear that the carriers were not protected in refusing to charge them by the New Orleans order. As repeatedly shown, that order simply prohibited Appellant Looney and others (then defendants):

"From claiming or instituting, or causing to be instituted, suit or suits * * * against * * * (appellees here) * * * FOR THE RECOVERY OF ANY DAMAGES, OVERCHARGES, PENALTY, FINES * * * for failure of * * * (appellees here) * * * to charge the rates or comply with the rules, orders, and classifications of the Railroad Commission of Texas, WHEN SAID RATES, RULES, ORDERS AND CLASSIFICATIONS ARE IN CONFLICT WITH THE RATES AND CLASSIFICATIONS PRESCRIBED AND AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION * * * or for the charging by * * * (appellees here) * * * on shipments moving between points in the

State of Texas * * * of the rates PRESCRIBED AND AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION * * *." (Record, pp. 109-110.)

The questions of *what* differential rates,—applicable to intrastate shipments,—were *authorized* by the Interstate Commerce Commission, or *what* differential rates,—prescribed by the State agencies,—were in *conflict* with those prescribed in the order, were not at all referred to or adjudicated. The carriers were protected by the order only to the extent that the State rates which they ignored were in *conflict* with the order of the Interstate Commerce Commission. The New Orleans order does not purport to go further; according to its very terms, if the carriers superseded State rates which were not in *conflict* with those prescribed for intrastate application by the order of the Interstate Commerce Commission, it did not protect them. This is what we claim they did; we claim that the State rates sought to be enforced in cause No. 34,832 are not in such conflict. The order appealed from herein, therefore, is a new and different and distinct order from that entered at New Orleans. The granting of the relief prayed for by appellants in their answer to the second supplemental bill would have been relief in a matter not covered by the prior order, and, consequently, such action could not have had the effect of nullifying or modifying the prior order,—the two, covering different ground, would have operated in perfect harmony. And certainly the refusal to grant the relief prayed by appellees in their second supplemental bill would not have annulled or modified the prior order. And we submit, again, that the Illinois Passenger Fare Cases are conclusive against the granting of the relief prayed by appellees, if we are right upon the proposition that the State differential rates are not in conflict with the order of the Interstate Commerce Commission.

B. THE NEW ORLEANS ORDER OF APRIL 20, 1917, IF VALID AND OPERATIVE AT ALL, WAS THE ORDER OF THE DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (Ex Parte Metropolitan Water Co., 220 U. S., 539, 544), AND BECAUSE OF THIS AND BECAUSE SAID ORDER WAS PENDENTE LITE, IT WAS SUBJECT TO THE CONTROL OF SAID DISTRICT COURT AND AT ANY TIME COULD BE SET ASIDE OR MODIFIED BY THAT COURT.

C. THE NEW ORLEANS ORDER, BEING INTERLOCUTORY, WAS NOT RES ADJUDICATA OF THE MATTER THEREIN DEALT WITH AND CERTAINLY WAS NOT RES ADJUDICATA OF NEW MATTER AND MATTER NOT COVERED BY THE TERMS THEREOF.

REPLY TO APPELLEES' "FIFTH POINT," THEIR BRIEF, PAGES 64-71.

A. THE INTERSTATE COMMERCE COMMISSION HAS NEVER HELD THAT THE DIFFERENTIAL RATES CONTAINED IN TEXAS LINES' TARIFF 2-B, FOR INTRASTATE APPLICATION, ARE AUTHORIZED BY ITS ORDER,—SAID ORDER, UNDER ANY CONSTRUCTION, BEING SATISFIED WHEN EQUAL RATES FOR EQUAL DISTANCES ARE CHARGED ON BOTH STATE AND INTRASTATE TRAFFIC.

B. THE INTERSTATE COMMERCE COMMISSION HAS NO JURISDICTION OVER INTRASTATE TARIFFS WHEN NO DISCRIMINATION AGAINST INTERSTATE TRAFFIC IS THEREIN INVOLVED, AND, SINCE TARIFF 2-B WHEREIN IT NAMES RATES FOR INTRASTATE APPLICATION NAMES NO SUCH RATES WHICH ARE *LOWER* THAN THE INTERSTATE, THE INTERSTATE COM-

MERCE COMMISSION HAD NO JURISDICTION TO CONSTRUE, SET ASIDE OR MODIFY SUCH PORTIONS OF THE TARIFF; THE FACT THAT SUCH PORTIONS OF THE TARIFF NAMED RATES FOR INTRASTATE APPLICATION WHICH WERE *HIGHER* THAN THOSE NAMED FOR INTERSTATE APPLICATION, FOR LIKE DISTANCES, DID NOT GIVE THE COMMISSION SUCH JURISDICTION FOR THE REASON THAT THE DISCRIMINATION THUS PRODUCED WAS AGAINST INTRASTATE TRAFFIC AND NOT AGAINST INTERSTATE TRAFFIC.

On page 65 of their brief appellees persist in misstating the position of appellants with respect to cause No. 34,832. In said suit no attack was made upon the base rates named in Tariff 2-B; the attack was limited to the differential rates which were in excess of those prescribed by the Railroad Commission of Texas for distances of 400 miles or less, it being contended in said suit that no lawful authority existed for the charging of such excessive differential rates. In their second supplemental bill the appellees offer the order of the Interstate Commerce Commission as authority for such excessive rates; appellants reply that such rates are not thereby authorized or attempted to be authorized, but, if so, the order to that extent, at least, is void for the reasons stated.

Appellees contend that the Interstate Commerce Commission has passed upon the question of whether or not the differential rates named in Tariff 2-B, for intrastate application, are authorized by the order and has held that they are so authorized. This proposition involves not only a misunderstanding of the record upon the point but a misconception of the functions of the Commission under the act. The nature of the proceedings referred to will be presently discussed; but it is belived to be appropriate here to mention some matters as to the powers of the Commission over which, we believe, there can be no dispute.

It is believed that the powers of the Commission are limited by the terms of the Act to Regulate Commerce. Nowhere in that act

can there be found any provision requiring carriers to file tariffs of intrastate rates as such. Of course, as a matter of convenience, it may be desirable that intrastate tariffs be so filed, but if so filed, as such, the act of filing is a mere gratuity. Nor can any provision of the act be found whereby the Commission is given any authority over intrastate tariffs, as such. Of course, when discrimination against interstate traffic is properly shown to be caused by the rates named in the intrastate tariffs, the Commission may act so as to prevent such discrimination, but this power comes from Section 3 of the act and not from any grant of power over the tariff itself. Applying these principles to the controversy in hand, it will be found: That there is no requirement in the order of July 7, 1916, compelling, or even authorizing, the filing of that portion of Texas Lines Tariff 2-B which names only intrastate rates, and, if there were such a provision in the order, it would be inoperative. All the carriers are there required to do, with respect to State rates, is to refrain from charging on intrastate shipments rates which are *lower*, for equal distances, than the rates charged on interstate shipments of like kind. So long as the carriers charge equal rates for equal distances, State and interstate, the order is satisfied, and there is no basis for a complaint of discrimination against interstate commerce. If the carriers go further,—as they have done,—and, instead of charging equal rates for equal distances,—propose to charge on State shipments rates which are materially *higher* than are charged on like interstate shipments for equal distances, no discrimination against interstate traffic is thereby involved, the order itself is not violated, and with the tariff which names such excessive rates for intrastate application the Interstate Commerce Commission is not concerned. And while the order itself is not violated by such conduct, it, by no means, purports to authorize the same. The charging of the excessive intrastate rates is a matter in nowise dealt with in, or controlled by, the order; it is conduct outside of, and beyond the operation of, the order, and since no discrimination against interstate traffic is thereby produced,

the Commission has no function to perform with respect thereunto. There is discrimination, of course, but the discrimination is against the State traffic, and is not against the interstate traffic. And since the Interstate Commerce Commission is only given the power to deal with interstate discrimination, the discrimination against intrastate traffic produced by the intrastate portions of the tariff simply presents a controversy cognizable by the State.

Now, in the proceedings referred to by counsel for appellees, the Interstate Commerce Commission clearly recognized the applicability of these principles, and expressly limited its consideration to the matter of excessive *interstate* rates and discrimination against *interstate* traffic claimed to be produced by Texas Lines Tariff 2-B. It did this as shown by its declarations,—set forth in the statement of the case herein,—to the effect that the hearing would "be confined to such allegations as the protestants may present respecting any of the rates and rules and regulations contained in the Fonda tariff (that is, Texas Lines Tariff 2-B) which are alleged to be in *contravention* of the Commission's order in the Shreveport cases." (Record, pp. 394, 396, 403-404.) If the tariff had named rates for intrastate application which were *lower* than the interstate rates for equal distances, the order would have been *contravened*. If it had named equal rates for equal distances for State and interstate application, the order would not have been *contravened*. If it had named rates for intrastate application which were higher than comparable rates for interstate application, the order would not have been *contravened*. If it had named a rate of $1.00 per hundred pounds for a certain character of shipment for a certain distance *intrastate*, and had named a rate of 10 cents per hundred pounds for a like shipment for a like distance *interstate*, the order would not have been *contravened*. All this because the order simply requires that no *lower* rate shall be charged intrastate than interstate for like distances. It was proposed in the tariff to charge rates uniformly and substantially *higher* State than interstate, and since no possible discrimination against interstate commerce could arise out of this situation,

the matter was beyond the cognizance and jurisdiction of the Interstate Commerce Commission. And the proceedings described in the statement of the case, we think, very clearly show that the Commission recognized this, and confined its consideration to the interstate features of the tariff. But if in this we are mistaken, then we submit that the Commission went beyond its authority and functions, and its decision to this extent is a nullity and affords no authoritative construction of the order.

But if it were true that the Commission had jurisdiction over the intrastate tariff, and that it used such power to construe the order and tariff as appellees claim, the fact remains that the argument of appellees is non-sequential,—they travel in circles. In one breath they say that appellants had no right to prosecute the suit in the State court because it is the function of the Commission, primarily, to pass upon the question of the compliance, vel non, of the tariff with the order, and that appellants should have invoked such construction before bringing the suit. And in the next breath they say that the Commission, upon such invocation, has passed upon the exact question. But whether this has been done or not, we think, it is immaterial. If it has not done so, the fact remains that it is powerless to authorise a carrier to supersede State-made rates by an order which does not definitely and unmistakably import such authority. American Express Co. vs. Caldwell, 244 U. S., 617; Illinois Passenger Fare Cases, recently decided. If it has done so, the fact and law remains, we think, that it is powerless to place a retroactive construction upon its order and thus make the order mean something which it did not mean when made. At all events, if the Commission has done what counsel claim for it, and this is important, this fact, at best, is not clearly shown and depends upon implications and indefinite statements, and amounts to an authorized attempt to disturb State rates by an indefinite order, such as was condemned in the Illinois Passenger Fare Cases.

REPLY TO APPELLEES' "SIXTH POINT," THEIR BRIEF, PAGES 71-73.

It is true, of course, that the granting or withholding of an injunction pendente lite *ordinarily* rests in the sound discretion of the court to which application is made, as stated by appellees. But, we think, this principle has no application to proceedings under Section 266 of the Judicial Code or under 38 Statutes at Large, 219. The terminology of both these statutes indicates, very clearly, we think, the purpose of Congress not only to require plaintiffs, in proceedings thereunder, that they make a clear case before an injunction shall issue, but that the court shall inquire into the merits of the controversy so that an injunction may issue only in a clear case. Proceedings under Section 266 do not, primarily, involve private rights; if successful, they suspend the operation of State sovereignty as manifested in statutes and orders of administrative boards. Great public interests are always involved, and it is believed that the provisions of Section 266 requiring three judges to participate in the hearing and at least two to concur in the judgment and the provisions providing for a direct appeal to this court evidence a purpose to secure a meritorious consideration of the matters involved. In fact, the decisions upon applications for temporary injunctions under the section often involves practically all of the substantial questions to be determined upon the final hearing, and it is believed that it was not the purpose of Congress to permit the Federal courts to suspend State statutes and orders unless the unconstitutionality of the same plainly appear. So clear is this purpose that we do not believe that a district court has the right under the section to grant a temporary injunction for the sole purpose of preserving the status. So, when an order of the Interstate Commerce Commission is offered as a justification for the setting aside of State statutes and rate orders, and the reply is made that the Commission's order does not purport to contain such authority, or, if so, that the order is void, the proceedings always involve great public, as well as private, interests. The orders of the Interstate

Commerce Commission are short lived; in the instant case the order has already operated through more than one-half of its life, and if the carriers succeed in preventing a consideration of the merits of the questions involved in this appeal, and then succeed in preventing a final trial in the district court,—as they have done up to this time, although the defendants have announced ready and insisted upon a trial at each term of the court,—the order, in all probability, will have long since expired by operation of law before the case finally reaches this court upon a final judgment. The situation with respect to the instant case, we think, furnishes an excellent illustration of the wisdom of Congress in providing,—as we think it has provided,—for a meritorious hearing upon an application for a temporary injunction under Section 266 of the Judicial Code and under 38 Statutes at Large, 219.

But if an abuse of discretion must be shown, we think the record very clearly indicates the same in view of the principles and purposes underlying Section 266 and 38 Statutes at Large, 219. The opinions rendered at New Orleans render it obvious that the injunction was there granted for the sole purpose of preserving the status, in so far as that order covered the subject matter at all, and that the meritorious questions presented were not given any weight. For instance, Judge Pardee declined to consider anything except the mere allegations of the bill, although the court permitted the introduction in evidence of the entire record before the Interstate Commerce Commission. He said: "A large amount of evidence was introduced on both sides." (Record, p. 67.) "Certainly, at this time, we are not called upon to decide upon the merits of the case. On the hearing before this special tribunal it seems that we are not called upon to try or decide any of the questions presented upon the pleadings further than to determine if the *bill itself* as amended presents a case for equitable relief." (Record, p. 69.) It must be clear, therefore, that so far as Judge Pardee was concerned in the decision, the defenses interposed were not considered, even though

such defenses were supported by competent proof making at least a prima facie showing against the relief granted. That Judge Batts was convinced by the proof and pleadings that the order of the Interstate Commerce Commission was void, at least in substantial parts, is unquestionably shown by his opinion. Among other things, he says:

"The law evidently contemplates that when the Interstate Commerce Commission shall have made an order, it is ordinarily to be obeyed until that order is set aside in the manner indicated by law.

"Whether this rule is universal in its application it is not necessary in this proceeding to determine. The Supreme Court has held that the Commission may determine what is a reasonable interstate rate, and what rate must be charged on intrastate business to prevent a discrimination, when both rates are in use. But the authority of the Interstate Commerce Commission with reference to intrastate rates is purely incidental and remedial. The qualities of such an order are radically different from those of an order resulting from the exercise of the legislative function involved in rate-making. To hold that it may, under any circumstances, regulate a State rate, is to carry the rules of interpretation to the extreme limit, in view of the proviso in the first section of the Interstate Commerce Commission Act. It may be held that it has the power to make such orders affecting intrastate rates as are necessary to prevent discrimination; certainly, the authority will not go beyond the necessity. When the Interstate Commerce Commission acts with reference to such a matter, it makes, or should make, the same character of investigation and the same character of determination that would be made by a court if a carrier charging the intrastate and the interstate rates were prosecuted for a violation of the Interstate Commerce Commission Act. Its action would be more clearly judicial than legislative. Whenever such an order is under consideration by a court, the court would have to determine whether the jurisdiction of the Interstate Commerce Commission had been exceeded;

and it would doubtless decline to apply the same rules with reference to the conclusiveness of the action of the Interstate Commerce Commission that obtain when that body is, in the exercise of its established legislative authority—making rates. It would not permit the Interstate Commerce Commission to conclusively determine its jurisdiction by determining the fact of the discrimination upon which its jurisdiction would depend.

"The order under investigation in this case is exceedingly comprehensive. It breaks down the intrastate rates of the State of Texas. These rates have not been held unreasonable. They are the result of many years of labor by an authorized rate-making body. They have, until the Interstate Commerce Commission acted, been acquiesced in by the railroads. SOME OF THE RATES WHICH HAVE BEEN SET ASIDE COULD NOT HAVE HAD AN APPRECIABLE EFFECT ON THE COMMERCE OF SHREVEPORT, OR ANY INTERSTATE COMMERCE. AFFIDAVITS ON FILE IN THIS COURT INDICATE THAT, IN SOME INSTANCES, THE RESULTS OF THE ORDER ARE DISASTROUS TO INDUSTRIES WITHIN THE STATE. IN OTHER INSTANCES THE EFFECTS ARE GROTESQUE. NO REASON HAS BEEN MADE TO APPEAR WHY IT IS NECESSARY TO SUPERSEDE THE TEXAS CLASSIFICATIONS IN ORDER TO PREVENT DISCRIMINATION." (Record, pp. 76-77.)

Judge Walker, the remaining judge, wrote no opinion in the matter at New Orleans. Judge Batts was one of the judges who entered the order from which the appeal herein is prosecuted, wrote the opinion for the court, and with reference to the New Orleans order, he states that the action there was simply and solely to preserve "the status" (Record, p. 79), and he makes it entirely clear that the court, in entering the last order, declined to consider any of the meritorious questions presented, although Judge Batts had convened the court under Section 266 of the Code and under 38 Statutes at Large, 218, and although the court so convened acted under such statutes.

We submit the proposition that unless the order of the Interstate Commerce Commission, when read in the light of the report accompanying it, was in all things free from matters which would render it invalid, and that unless it carried, with unmistakable certainty, authority to the carriers to ignore the State statutes and rate orders, it should not have been enforced either at New Orleans or at Austin in the order appealed from; that an order not free of such objections is wholly incompetent to confer such authority upon the carriers is, we think, the clear holding in the Illinois Passenger Fare Cases recently decided, as well as the holding in American Express Co. vs. Caldwell, 244 U. S., 617. We do not believe it to be important that the orders were entered upon applications for temporary injunction rather than upon final hearing; unless the order clearly and validly contained such authority to the carriers, they were bound to obey the State's statutes and rate orders, and they should not have been absolved from such duty even temporarily. That neither the New Orleans court nor the Austin court considered this question is undoubted; that Judge Batts thought the order to be void in substantial parts is clear from his own statements. And yet the order appealed from was entered, obviously upon a consideration only of the allegations made by appellees. We submit that the court refused to perform the duties laid upon it by Section 266 of the Judicial Code and 38 Statutes at Large, 219, and because of this and because it refused to consider the meritorious matters of defense urged, and because it based its action upon an order of the Interstate Commerce Commission which was, in substantial parts, prima facie void at least, it abused its discretion.

REPLY TO APPELLEES' "SEVENTH POINT," THEIR BRIEF, PAGES 73-74.

A. UNITED STATES WAS A PARTY DEFENDANT IN EQUITY NO. 295, AND SUFFICIENT NOTICE OF APPELLANTS' ANSWER WAS GIVEN TO IT;

B. THE ORDER OF THE INTERSTATE COMMERCE

COMMISSION BEING VOID IN THE PARTICULARS ALLEGED, THE COURT HAD AUTHORITY TO DENY THE RELIEF PRAYED FOR BY APPELLANTS AND TO GRANT THE RELIEF, IN SUBSTANTIAL PART, AS PRAYED BY APPELLANTS.

As shown in "Statement of the Case," the United States was made party to Equity No. 295, in September, 1916, and, prior to the hearing at New Orleans, Louisiana, on April 16, 1917, had filed its special appearance. (Record, p. 566.)

Copies of the order of Judge Batts, setting the second supplemental bill and appellants' answer thereto for hearing for September 20, 1917, were furnished to the Attorney General of the United States, by appellants, on September 6, 1917 (Record, p. 567), and at the same time copies of appellants' answer were so furnished, except that the following language in the concluding sentence of the answer was omitted, towit: "and that said order be set aside," which language was omitted from the copy through mistake by the stenographer (Record, p. 567). However, as pointed out in the "Statement of the Case," the copy of the answer as served specifically alleged the particulars in which said order is void (Record, pp. 45-54), and the allegation therein contained, based upon the foregoing, is that the order should not be enforced or given effect "but should be set aside in whole and in part." (Record, p. 54.) This, we think, was sufficient to give any reasonably intelligent man notice that the order would be attacked at the hearing beginning on September 20, 1917, even if such additional notice was required, and, in this connection, reference is here made to what is said under our "Reply to Appellees' 'Third Point,'" on pages 40-43 of this brief above.

In addition to this, we submit that the opinion of this court in the Illinois Passenger Fare Cases, recently decided, is conclusive of the right of appellants to maintain the attacks made by them upon the order by way of defense.

REPLY TO APPELLEES' "EIGHTH POINT," THEIR BRIEF, PAGES 75-77.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION OF JULY 7, 1916, WAS NOT MADE IN WHOLE UPON THE PETITION OF THE RAILROAD COMMISSION OF LOUISIANA, BUT:

A. SUBSTANTIAL PORTIONS THEREOF WERE MADE UPON THE PETITION OF THE CARRIERS THEMSELVES, MANY OF THEM HAVING THEIR PRINCIPAL OFFICES WITHIN THE WESTERN DISTRICT OF TEXAS;

B. SUBSTANTIAL PORTIONS THEREOF WERE MADE UPON THE PETITION OF OTHER PERSONS RESIDING WITHIN THE WESTERN DISTRICT OF TEXAS; AND

C. SUBSTANTIAL PORTIONS THEREOF WERE MADE UPON THE COMMISSION'S OWN INITIATIVE, AND NOT UPON THE PETITION OF ANY PARTY, ALTHOUGH PETITIONS WERE BEFORE THE COMMISSION, THE SUBJECT-MATTER OF WHICH PETITIONS AROSE IN SUBSTANTIAL PART WITHIN THE WESTERN DISTRICT OF TEXAS.

Appropriate allegations, satisfying the venue statute, are contained in the pleadings of appellants and in the answers of the other defendants in Equity No. 295. (Record, pp. 302-305.) These allegations being set forth in the "Statement of the Case" above. The evidence before the Interstate Commerce Commission in the case amply supports each and all of the allegations thus made, and the evidence in this record, we think, is amply sufficient to do so.

Among other things, the following appears:

On June 17, 1915, the Interstate Commerce Commission made an order prescribing class rates and certain commodity rates for application between Shreveport, Louisiana, and points in Texas.

This is known as the "Supplemental Order," and the proceedings are reported in 34 I. C. C., 472. (Record, pp. 373-377.)

On October 30, 1915, the Railroad Commission of Louisiana filed a petition with the Interstate Commerce Commission which was docketed as cause No. 8418 (Record, pp. 385-390), which cause was later consolidated with others, and out of the consolidated cases the order of July 7, 1916, issued. (Record, pp. 141 and 183.)

Now, in said petition filed by the Railroad Commission of Louisiana, it was alleged that the interstate rates between Shreveport and points in Texas were unreasonable, and thereupon the following allegation was made:

"That just and reasonable rates for application between Shreveport, Louisiana, and points on lines of defendant in Texas * * * WOULD NOT EXCEED THE SCALE OF CLASS RATES prescribed by this Commission in its supplemental order, 34 I. C. C., 472." (Record, p. 388.)

And thereupon it was prayed that such just and reasonable rates be prescribed (Record, p. 390); but it turns out that the rates prescribed in the order of July 7, 1916, are very materially higher than those prescribed in the supplemental order, 34 I. C. C., 472. For instance, the class rates prescribed in the supplemental order for distances of 10 miles and less were as follows:

Classes ..	1	2	3	4	5	A	B	C	D	E
Cents ...	13	12	10	8	6	7	6	5	5	4

(Record, p. 374); while the rates prescribed in the order of July 7, 1916, for the same distances, are as follows:

Classes ...	1	2	3	4	5	A	B	C	D	E
Cents ...	23	19	16	14	10	10	8	7	6	5

(Record, p. 184.)

It will be noted that there is an increase here in the first-class rate for this distance of 79.9 per cent, and, while this percentage of increase does not obtain throughout the scale, it is true that

there is a very substantial general increase throughout the scale, with the possible exception of the fourth-class rate for some distances above 60 miles. The class rates prescribed in 34 I. C. C., 472, were substantially the same as the rates of the Texas Commission for equal distances; upon this point, the Commission, in its report of July 7, 1916, says:

"The scale of mileage class rates from Shreveport to destinations in Eastern Texas, hereinafter called the Shreveport scale, prescribed by our supplemental order, correspond almost exactly with the Texas intrastate rates." (Record, p. 146.)

It will be noted that the rates so prescribed in 34 I. C. C., 472, were alleged to be the reasonable rates which should be prescribed in the petition of the Railroad Commission of Louisiana, and that it was there alleged that these rates should not be exceeded, but they were exceeded to such an extent that the carriers in their original bill in this case allege that the effect of the order of July 7, 1916, is to "yield in revenues to the plaintiffs several million dollars per annum" more than they would receive under the old rates. (Record, p. 125.)

In addition to the foregoing, it is also true that the order of July 7, 1916, prescribed interstate rates which are materially higher than those therefore existing and complained of by the Railroad Commission of Louisiana as being already too high and condemned as being unreasonably high by the Commission itself in its report of July 7, 1916. This is true with respect to interstate rates so prescribed by appellants between Shreveport, Louisiana, and all stations on 2600 miles of railroad in Texas. (Record, pp. 524-565.) Many specific instances are shown in the evidence in this record, but one representative instance is believed to be sufficient here. For instance, Higgins, Texas, on the Panhandle & Santa Fe Railway, is 675 miles west of Shreveport, Louisiana. (Joint Line Mileage.) The class rates in effect between Shreveport and Higgins, at the time of the filing of the petition of the Railroad Commission of Louisiana, on October 30, 1915, and complained of therein as being too high, are shown

in the second line below (the classes being indicated in the first line), and the rates prescribed by the order of July 7, 1916, are shown in the third line below.

Classes ...	1	2	3	4	5	A	B	C	D	E
Cents	120	107	88	84	63	68	60	48	36	29
Cents	144	122	103	84	73	75	59	53	45	38

(Record, p. 563.) In other words, whereas the Shreveport merchant paid $1.20 per 100 pounds, first class, on goods shipped to Higgins (if he ever shipped any), and whereas the Railroad Commission of Louisiana, in its said petition, complained that this rate was too high, and whereas the Commission in its report of July 7, 1916, said that the rate was too high, the order of July 7, 1916, nevertheless, prescribes a rate of $1.44 to take its place. The railroads contend, of course, that this $1.44 was put in upon the petition of the Railroad Commission of Louisiana; this proposition, however, would appear to be silly upon its face, even if it were not expressly repudiated by the language of the Commission's report upon the subject. After the filing of the petition of the Railroad Commission of Louisiana on October 30, 1915, the carriers "for the first time" "proposed" a scale of class rates and tariffs of commodity rates for adoption by the Commission, which were very much higher than those alleged to be reasonable by the Railroad Commission of Louisiana and only slightly higher than those prescribed by the Commission in its order of July 7, 1916. The report of the Commission very clearly indicates that this "proposal" of the carriers was treated as a petition and substantially adopted by the Commission. (See Record, pp. 146-150.)

When the entire record is considered, we think there can be no escape from the conclusion that substantial parts of the order of the Interstate Commerce Commission were made upon the petition of carriers whose offices are within the Western District of Texas, and, if so, it is very clear that the venue status is satisfied. But if it be true that the increased rates were not put in upon the petition of the carriers, then it must be true that they

were put in upon the Commission's own initiative because, for, as shown above, the petition of the Railroad Commission of Louisiana expressly alleges that just and reasonable rates for application between Shreveport and points in Texas should not exceed those prescribed in 34 I. C. C., 472, whereas the rates actually prescribed in the order of July 7, 1916, in some instances, exceed those prescribed in 34 I. C. C., 472, by more than 70 per cent. It is inconceivable that the Railroad Commission of Louisiana would petition for rates much higher than those which its shippers had theretofore been paying; there is nothing in its petition to warrant any such proposition; and this being true, it must follow that those portions of the order wherein rates higher than those theretofore existing between Shreveport and Texas points and alleged to be reasonable by the Railroad Commission of Louisiana were prescribed either upon the petition of the carriers or upon the Commission's own initiative and, in either instance, venue would lie within the Western District of Texas.

The record also shows that substantial portions of the order were made upon the petition of various persons, associations, etc., residing within the Western District of Texas, among whom were the Manufacturers and Jobbers' League of San Antonio, Texas; the Waco Chamber of Commerce, and Taylor-Hanna-James Company of Waco, Texas.

REPLY TO APPELLEES' "NINTH POINT," THEIR BRIEF, PAGES 77-78.

FOR OUR REPLY TO THE PROPOSITION HERE MADE BY APPELLEES REFERENCE IS HERE MADE TO WHAT IS SAID IN REPLY TO APPELLEES' FIFTH POINT ON PAGES 45-50 OF THIS BRIEF.

REPLY TO APPELLEES' "TENTH POINT," THEIR BRIEF, PAGES 78-89.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION HAS NOT BEEN CORRECTLY CONSTRUED BY

THE APPELLEES, NOR IS TARIFF 2-B, WHEREIN IT NAMES DIFFERENTIAL RATES FOR APPLICATION ON INTRASTATE SHIPMENTS MOVING FOR DISTANCES OF 400 MILES OR LESS, IN COMPLIANCE WITH OR AUTHORIZED BY SUCH ORDER.

A shipment can not move between Shreveport, La., and any point within differential territory in Texas unless it moves for more than 400 miles (Record, pp. 40, 511). Upon the question of differential rates, the petition of the Railroad Commission of Louisiana specifically alleged that differential rates should not be available until after the shipment had moved for 400 miles or more (Record, p. 388), and thereby, through necessary implication at least, alleged that there was no discrimination against interstate traffic involved by the application of the Texas Commission's differential rates on intrastate shipments moving for distances of 400 miles or less. The only parts of the order which deal with differential rates at all are those portions which prescribe maxima differential rates to be applied on interstate shipments moving between Shreveport, La., and points in Texas in differential territory (Record, p. 185), and these rates so prescribed, of course, can have no application unless the shipment moves more than 400 miles on account of the geographical location of Shreveport with respect to the differential line. The only portions of the order which can, even indirectly, be held to have any effect upon intrastate differential rates on shipments moving for distances of less than 400 miles are Paragraphs IX and X thereof (Record, p. 193), wherein it is simply provided that the carriers shall not charge intrastate rates which are *lower* for equal distances than the rates charged on shipments between Shreveport, La., and points in Texas. If *equal* rates for equal distances are charged State and interstate (on shipments moving less than 400 miles) the plain terms of the order are undoubtedly satisfied. But the tariff, wherein it names intrastate differential rates, plus base rates, so names rates very materially *higher* than the rates therein named for application be-

tween Shreveport and Texas points for all distances of 400 miles or less. About this there can be no dispute; it is essentially admitted by the appellees. Under the tariff the Amarillo man is charged 42 cents, first class, for a 50-mile haul, and 63 cents, first class, for a 100-mile haul, whereas the Shreveport shipper is only charged 37 cents, first class, for a 50-mile haul and 53 cents for a 100-mile haul. This discrimination against the intrastate traffic is universal for all distances up to 400 miles. Now if the Texas Commission's differential rates are allowed to apply the State and interstate rates for all distances up to 245 miles will be exactly equal, and for all distances between 245 miles and 400 miles the intrastate rates will be somewhat *higher* than the interstate rates, but not as much higher as they are made by Tariff 2-B. This situation is also undoubted, and is essentially admitted. Numerous illustrations are given in the Record on pages 37-42, and in our original brief. And nothing can be found in the order or report of the Interstate Commerce Commission to authorize or justify it. As shown in other portions of this brief, the appellees do not attempt to show any express provision of the report or order which justifies it, but they seek to draw implications therefrom which they argue does so; but as stated elsewhere, this court, in the Illinois Passenger Fare Cases, in effect held that implications drawn from an order are impotent to justify the setting aside of State-made rates—the order must so clearly provide before it is of any force, even if valid. Throughout their pleadings and briefs, counsel for appellees seek to predicate such implications upon the alleged fact that unless their construction of the order is correct discriminations will result from the enforcement of the order. But the alleged discrimination so produced is almost entirely against *intrastate* traffic and not against *interstate* traffic, and with such discrimination the Interstate Commerce Commission and its order can not be properly concerned. But the conclusive answer to the whole contention is that no discrimination arises as alleged by them, and this becomes manifest when the relevant rates are correctly applied as contended for by appellants.

On pages 81-82 of appellees' brief and in their second supplemental bill (Record, pp. 8-12), representative cases are given in illustration of their allegation of discrimination; but in each case the really important facts are ignored. This can be demonstrated with respect to every illustration given in their brief or pleadings and every illustration which can be given by them. We will first take up the illustration given in their brief:

The rates given as applicable to the intrastate shipments mentioned on pages 81-82 of the appellees' brief are incorrect. This is due to the fact that the orders of the Texas Commission providing differential rates where the shipment moves a total distance of more than 245 miles have been ignored. It so happens that the Texas Commission's differential rate, first class for 81 miles, where the shipment has moved a total distance of more than 245 miles, is 9 cents per 100 pounds, which is exactly the same as that named in the order of the Interstate Commerce Commission (Record, pp. 505, 510). So that it results that Shreveport would pay exactly the same rate, under appellants' contention, as the rates paid by the Texas shippers in each of the cases mentioned, although the Shreveport shipment would move 191 miles further than the Dietz or Dallas shipments, 222 miles further than the Denison shipment, and 223 miles further than the Ft. Worth shipment. It would be exceedingly difficult to discover any discrimination against the Shreveport traffic arising out of this situation, and the concern of the Interstate Commerce Commission is, by the Act to Regulate Commerce, expressly limited to preventing discrimination against *interstate* traffic. The act will be searched in vain for anything which gives that Commission any power to deal with discrimination against, or as between *intrastate* shipments; and since this is true it would be violative of every canon of construction to say that the Commission purposely intended to go beyond its powers over interstate commerce and, by exerting usurped power over intrastate traffic, to authorize the setting aside of the State's rates and regulations. If discrimination as between intrastate shipments results from the enforcement of the State's

laws or rate orders, or from the concurrrent operation of the State's laws and the order of the Interstate Commerce Commission, the question of the enforcement of the State's laws and orders is a matter for the State itself to determine in line with its own public policy, and affords no controversy cognizable by the Interstate Commerce Commission. It has been finally decided that an order of the Interstate Commerce Commission is impotent to strike down State rates where this is not absolutely essential to the prevention of discrimination against interstate commerce.

But since the illustrations given by appellees even the rates named therein were correct, are as favorable as can be imagined for their purpose, we deem it appropriate to discuss such illustrations under the assumption that the rates named therein for intrastate application are correct.

Metz, Texas, is 571 miles west of Shreveport, La., and 348 miles west of Fort Worth, Texas; a shipment from Shreveport to Metz would move, therefore, 223 miles further than a shipment from Fort Worth, Texas, to Metz, Texas. The "first class" rate prescribed in the order of the Commission for 223 miles, at the beginning of the scale, is 85 cents per 100 pounds, and at the end of the scale is 43 cents (Record, p. 184), which is the rate which the order and report finds would be a reasonable rate to be paid by the Shreveport shipper for the 223-mile haul. But, under our construction of the order, the difference in the rate paid by the Shreveport shipper and the Fort Worth shipper would only be 12 cents per 100 pounds first class, and under the findings of the Commission we submit that the difference of 223 miles in the distance more than justifies the difference of 12 cents in the rate, and, therefore, there can be no claim of discrimination against the Shreveport shipper. In fact the Shreveport shipper, with a difference of only 12 cents in the rate, is clearly given an unjust and material advantage over the Fort Worth shipper. And if it be said that the 223 miles of excess in the Shreveport-Metz shipment cannot properly be chargeable with two terminal costs, and that, therefore, the difference in the rates

ought to be something less than 85 cents, or even 43 cents, the reply is that the Commission in the report finds that the terminal cost would be something less than 9 cents per 100 pounds. (Record, pp. 147-148.) But the minimum rate found to be reasonable for a 223-mile haul is 43 cents, as shown above, and if the full 9 cents is subtracted therefrom, there will remain 34 cents which the Commission, necessarily, found would be a reasonable minimum difference in the rates for the two hauls; whereas, the actual difference is only 12 cents, which, obviously, results to give the Shreveport shipper a minimum unjust advantage of 22 cents per 100 pounds. This would seem to be enough advantage, but the carriers claim that the Shreveport man should have his goods hauled 571 miles at exactly the same rate paid by the Fort Worth man for a 348-mile haul, and thus leave Fort Worth's natural advantage of geographical location absolutely destroyed.

Dallas, Texas, is 191 miles nearer Metz, Texas, than is Shreveport, La.; if the rate from Dallas to Metz had been correctly named by appellees, there would only have been a difference of 6 cents per one hundred pounds, and we submit that, under the findings of the Interstate Commerce Commission, it would be entirely just to charge more than 6 cents difference to compensate for the difference of 191 miles in the hauls. The rate found to be reasonable by the Commission for a 191-mile haul, at the beginning of the scale, is 80 cents per 100, and, at the end of a 571-mile haul, is 31 cents per 100 pounds. If a full terminal cost of 9 cents is added to the actual difference of 6 cents, there remains a minimum advantage to Shreveport of 16 cents per 100 pounds (i. e., 31 cents minus 15 cents). Likewise the Shreveport-Metz shipment would move 191 miles further than the Dietz-Metz shipment, with only a difference of 6 cents per 100 pounds.

In their second supplemental bill and on page 11 of the record appellees set forth a table as illustrative of the alleged effects of the concurrent application of the order of the Interstate Commerce Commission and the orders of the Railroad Commission of Texas with respect to differential rates. But none of the illus-

trations given in such table are at all applicable for the simple reason that for distances of more than 400 miles appellants, in the State court suit, or here, make no contention,—that is to say the rates on no shipment which moves more than 400 miles is involved in the State court suit or in this proceeding. If the State court suit had been prosecuted to successful finality, the rates, State and interstate, between the points named on page 111 of the record would have been exactly the same. But lest the illustrations be considered, and if left unchallenged, operate to confuse, we call attention to the fact that in no instance has the correct rate been named as applicable on intrastate shipments. For instance, the State's differential rate, first class, for 205 miles in differential territory, is 21 cents per 100 pounds (Record, p. 505) instead of 13 cents, as alleged, with respect to shipments between Fort Worth and Plateau, and is 21 cents instead of 16 cents, as alleged, with respect to shipments between Dallas and Plateau, and is 23 cents instead of 18 cents, as alleged, with respect to shipments between Fort Worth and Sierra Blanca. (Record, p. 505.) So that if it were true that the distances of more than 400 miles were involved, there would only be a difference of 4 cents in the rates applicable between Shreveport and Plateau and between Fort Worth and Dallas, on the one hand, and Plateau on the other hand, while the Shreveport shipment would move 191 miles further than the Dallas shipment and 223 miles further than the Fort Worth shipment. It is believed that the difference in distance would more than justify the difference in rates; but, as stated, rates for distances greater than 400 miles are not at all involved in this proceeding.

As it is true that no discrimination against interstate traffic can be shown by the illustrations used by appellees, it is also true that they cannot name a single instance where any such discrimination can be shown against such traffic. In every possible instance where there is a difference in the rates applied from Shreveport and the rate applied from any Texas point, there is also a

very material difference in the distance hauled and service performed by the carrier.

On pages 84-85 of their brief appellees say that the Interstate Commerce Commission "rejected" the Texas Commission's rule to the effect that differential rates should not be charged (except in certain named instances) unless the shipment moves a total distance of more than 245 miles. To this there are two answers: In the first place, nothing can be found in the order or report of the Interstate Commerce Commission to this effect. The excerpt quoted on pages 84-85 of the brief is all there is in the report or the order bearing upon the proposition, and there is certainly nothing in this excerpt to justify appellees' proposition. A mere general discussion is not a rejection, and is certainly not a "rejection" evidenced with that certainty required by the opinion of this court in the Illinois Passenger Fare Cases, even if that Commission had the power to reject the rule at all. In the second place, it must be clear that the Interstate Commerce Commission had no power to "reject" this rule, or any other rule, applicable to intrastate traffic unless such rejection was first expressly and unmistakably found necessary in order to prevent unjust discrimination against interstate commerce. And, as stated, no such finding can be discovered in the order or report. Besides, the illustrations used by appellees themselves positively demonstrate, we think, the futility of saying that the "rejection" of the rule, for the distances here in question, was at all necessary to prevent discrimination against interstate traffic.

On page 85 of the brief appellees say that the Commission "found that the application of different differential systems on State and interstate traffic would operate as a discrimination against Shreveport," but appellees do not attempt to point out any such finding, nor can any finding be discovered. It simply does not exist, and we are constrained to say that counsel for appellees, in the assertion quoted, must have assumed that the court would not read the Commission's report or would take their bald statement in preference to what is said in the report.

The excerpts quoted from the order on page 86 of appellees' brief are, by the order, expressly limited to *interstate* movements, and have no reference to intrastate shipments. It is admitted that the distance between Shreveport and the nearest point in differential territory is more than 400 miles; therefore, these excerpts can have no application, even indirectly, to intrastate shipments moving for distances less than 400 miles. As to differential rates on shipments moving less than 400 miles, the order is absolutely silent. The order and report makes no differential rule for shipments moving less than 400 miles for the sufficient reason that in those portions of the order which at all deal with differentials no such shipment was or could be involved.

With respect to the contentions advanced on pages 87-88 of appellees' brief with respect to the subsequent proceedings before the Suspension Board, it is believed to be sufficient to refer to what has been said on pages 45-50 of this brief in reply to appellees' "FIFTH POINT." The Suspension Board and the Commission did not so construe the tariff, because, first, it had no power to do so, and, second, because, as shown, its consideration was limited to instances of excessive interstate rates and discrimination against interstate traffic. The fact that the Attorney General, in that proceeding, may have alleged non-compliance with the order, and the fact that argument may have been made thereon, can neither have the effect of amending the Act to Regulate Commerce so as to confer upon the Commission jurisdiction over intrastate discrimination, nor these facts change the plain statement of the presiding officer (Commissioner Hall) that these matters, with respect to intrastate traffic, would not be considered.

REPLY TO APPELLEES' "ELEVENTH POINT," THEIR BRIEF, PAGES 89-93.

With respect to the matter involved in the State court suit, no status has been fixed by any prior order of the court. The order at Atlanta (Record, p. 61) did not attempt to do so; the order at New Orleans (Record, pp. 109-110) simply protects the car-

riers in ignoring the State-made rates in those instances where the State rates "conflicted" with those prescribed or authorized by the order of the Interstate Commerce Commission. The question of whether or not the State rates now in question so conflicted, or whether or not the rates actually being charged were authorized by the Commission is in no way adjudicated or referred to in either of the prior orders. This is new matter as to which no status had been fixed, and which had no "existing status."

The proposition made on page 92 of the brief of appellees to the effect that a tariff "thus in effect under the orders of the Interstate Commerce Commission" cannot be restrained begs the whole question. We say that there was no requirement of law, or of the order, compelling the carriers to file the intrastate portions of Tariff 2-B, and that the Commission is wholly without power to enforce, set aside or modify such portions of the tariff, so long, at least, as these portions of the tariff do not name rates for intrastate application which are *lower* than those named, for equal distances, for interstate application,—and in this connection reference is here made to what is said on pages — of this brief, supra.

It it our view that the right to the relief granted the carriers was dependent alone upon an order of the Interstate Commerce Commission which so definitely carries authority to supersede State rates as that there can be no question of its existence,—Illinois Passenger Fare Cases,—and that the order offered for this purpose carries no such authority. And whenever, and wherever, the relief granted was sought it was the duty of the court to refuse it when the prayer therefor was based upon such an order. The authorized conduct of the carriers, it is believed, is wholly incompetent to give their unlawful acts a "status" which cannot be changed by a court when called upon to determine the legality of these very acts.

Nor is it believed that the so-called "rehearing" now pending before the Interstate Commerce Commission is important. Noth-

ing that the Commission may do in the future can at all affect the question of the legality of the intrastate rates now being charged, and which have been charged since November 1, 1916, and which it is proposed to be charged at least up to the time when the Commission may act in the so-called "rehearing." The Commission cannot grant reparation on these rates even if it should in the future decide that it was in error in making the order of July 7, 1916, for the simple reason that they are *intrastate* rates. The order has already operated for more than thirteen months, and under its claimed authority the carriers have collected several million dollars from the people of Texas over and above what they were entitled to collect if the order for any reason is invalid or if the carriers have misconstrued it. The carriers propose, under like claim of authority, to collect several million dollars more, and will do so if they can prevent the court from passing upon the questions presented. And after having collected this money, the Interstate Commerce Commission has no power to cause it to be refunded. And here appears an instance of the injustice and hardship of the whole proceeding, for the Commission, we take it, might grant the Shreveport shippers retroactive relief because their rates are interstate, but, at the same time, it can grant the Texas shippers none. We submit that the appeal presents a case within the principles announced by this court in Southern Pacific Terminal Co. vs. Interstate Commerce Commission and Young, 219 U. S., 498, 514-515, and in Southern Pacific Co. vs. U. S., 219 U. S., 433, 452.

The cases cited on page 92 of appellees' brief are not in point upon their propositions because the tariffs there involved were all purely *interstate*, and not intrastate, tariffs.

APPELLANTS' SUPPLEMENTAL PROPOSITION NO. IVA (UNDER PROPOSITION NO. IV, APPELLANTS' ORIGINAL BRIEF, PAGES 55-66).

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION OF DATE JULY 7, 1916, IS VOID FOR INDEFI-

NITENESS, IN THAT IN PARAGRAPHS IX AND X THEREOF (RECORD, P. 193) THE CARRIERS ARE PROHIBITED FROM CHARGING INTRASTATE RATES WHICH ARE LOWER, MILEAGE CONSIDERED, THAN COMPARABLE SHREVEPORT-TEXAS RATES, *"EXCEPT IN THOSE INSTANCES IN WHICH THE RATES BETWEEN TEXAS POINTS HAVE BEEN DEPRESSED BY REASON OF WATER COMPETITION ALONG THE GULF OF MEXICO OR WATERS CONTIGUOUS THERETO."*

The exception embodied in paragraphs IX and X, it seems to us, clearly bring the order within the condemnation of the following portion of the opinion in American Express Co. vs. Caldwell, 244 U. S., 617, and reaffirmed in the recent Illinois Passenger Fare Cases, towit:

"Where a proceeding to remove unjust discrimination presents solely the question of whether the carrier has improperly exercised its authority to initiate rates, the Commission may legally order, in general terms, the removal of the discrimination shown, leaving upon the carrier the burden of determining also the points to and from which rates must be changed, in order to effect a removal of the discrimination. But where, as here, there is a conflict between the Federal and State authorities, the Commission's order cannot serve as a justification for disregarding a regulation or order issued under State authority, *unless, and except so far as it is definite as to the territory or points to which it applies.*"

It must be obvious that the exception embraced in paragraphs IX and X of the order leave to the carriers not only the burden, but the privilege, of saying in what *instances* the State rates have "depressed by water competition," and the privilege of extending or restricting the State rates which they shall be at liberty to ignore. What Texas rates "have been depressed by water competition" is always a question of very lively controversy as between the Texas Commission and the carriers and as between various localities and shippers in the State. More than one such alleged

rate has been the subject of bitter controversy and, perhaps, extended litigation. There are many rates in Texas which are by the carriers claimed to be so depressed and by others claimed to have been artificially depressed. Again, there are many localities which claim that they are entitled to water competition rates, since competing localities have been given such rates under substantially similar conditions. Again, there are many persons and localities which claim that there are no rates which have in fact been so depressed. And still many others contend that, at some particular points, the rates were not in good faith installed because of any real water competition. And, as stated, the whole subject is a matter of constant controversy. This is mentioned here to illustrate the extent of the discretion left to the carriers by the order. And, as stated, the order leaves to the carriers the power of passing upon which of the depressed rates have been so depressed by reason of water competition, and the question of determining what localities are in fact entitled to such depressed rates. It is manifest that the exception leaves the whole matter indefinite.

And the indefiniteness is increased, rather than decreased, by reference to the report of the Commission. (See Record, pp. 181-182.) For instance, the report shows that the rates to and from *certain points* (unnamed) have been so depressed, but the points are nowhere named. Galveston, Port Bolivar, and Port Arthur (Record, p. 181), Houston, Beaumont, and Sabine Pass (Record, p. 182) are named as being among the "points," but the report affirmatively shows that there are others which are left unnamed,—it says: "and other similar points." (Record, p. 182.) That the carriers, in the exercise of the discretion thus attempted to be left to them, have greatly enlarged the number of points with respect to some rates for partial application and have reduced the number of such points with respect to application of other such rates is affirmatively shown by the record herein. In their first supplemental bill (Record, pp. 81-82), the appellees allege:

"That in obedience to so much of said order of the Interstate

Commerce Commission of July 7, 1916, as permits the charging of lower rates between Texas points, where such rates have been depressed by reason of water competition along the Gulf of Mexico and waters contiguous thereto, plaintiffs have provided on page 96 of said Tariff 2-B a scale of rates for application between Houston, Galveston, Texas City and Velasco, and between Velasco, Galveston and Texas City, and between other points named on said page 96, to which reference is here made, a scale of class rates lower than the rates published in said Texas Lines Tariff No. 2-B, for application for the same distances between Shreveport and points in Texas, which said lower rates have been caused or influenced by water competition, and these defendants have published on page 88 of said Texas Lines Tariff No. 2-B a provision that rates between Galveston, Port Bolivar, Velasco, Brazosport, Bryan Mound, Texas, and the following points on the one hand, stations between Houston and Galveston on the G., H. & S. A. Ry., stations between Houston and Galveston on the G., H. & H. R. R., stations between Houston and Galveston on the G., C. & S. F. Ry., Anchor, Angleton, Ross and Clute on the H. & B. V. Ry., stations Hawdon to Anchor, inclusive, on the I. & G. N. Ry., and all other points in Texas on the other hand, shall not exceed the rates applying between Houston and such other points in Texas under the provisions of Items Nos. 1200 and 1225, or reissues, plus the following differential rates in cents per 100 pounds:

Classes	1	2	3	4	5	A	B	C	D	E
Rates	7	6	5	3	3	3	3	2	2	2

and on the same page of said tariff a differential basis of rates is prescribed to and from Texas City, Texas, to and from Port Arthur and Sabine Pass, Texas, to and from Aransas Pass, Texas, and that said differential rates as shown on page 88 have been influenced or depressed by water competition. That on pages 101 and 102 of said tariff differential rates are prescribed to and from the said points described on page 88 thereof on cotton seed and prod-

ucts, carloads, which differential rates have also been influenced or depressed by water competition." (Record, pp. 81-82.)

But there is no showing in the record that there are not other points entitled to water-depressed rates, nor is there any showing that the points named in the tariff, and not named in the report and order, are entitled thereunto. In this connection, attention is called to the fact that there are many points on and along the Gulf of Mexico and waters contiguous thereto which, apparently, would be entitled to water-competitive rates if the points to which these rates have been given are entitled thereto.

To illustrate the latitude of the discretion undertaken to be given the carries by the exception, and the manner of its exercise, we next call attention to some of the things which have been done under the claimed authority of the exception. In Texas Lines Tariff 2-B, effective November 1, 1916, no such rates are named as applicable to or from or between Beaumont, Texas, and Port Arthur, Texas. But by Supplement No. 14 to said tariff, effective March 19, 1917, the following item was added, towit:

"RATES IN CENTS PER 100 POUNDS.

From Port Arthur, Texas, to Beaumont, Texas.

Classes	1	2	3	4	5	A	B	C	D	E
Rates	20	18	16	15	12	12	10	9	8	5"

It will be noted that such rates were made applicable only *from* Port Arthur *to* Beaumont,—and were not made applicable both ways. But by Supplement No. 16 to said tariff, effective July 14, 1917, like rates were made applicable also *from* Beaumont *to* Port Arthur, but these new rates were made applicable only by way of one particular railroad. (See Item 1236-A, Supplement 16, Texas Lines Tariff 2-B.) It is believed that many similar illustrations could be given, but this one is thought to be sufficient to illustrate the point. Now all these rates are claimed to have been established under the authority of the exception in the order, and we submit that, if the rates are thus authorized at all,

both Beaumont and Port Arthur were entitled to them from November 1, 1916; but, in the use of the claimed discretion, the carries denied both points the entire benefit thereof up until March 19, 1917, and denied Beaumont the benefit of such rates on its outbound traffic, and denied Port Arthur the benefit thereof on its inbound traffic from Beaumont up until July 14, 1917, and both towns have since been denied the benefit of such rates on traffic *from* Beaumont *to* Port Arthur since July 14, 1917, except when the traffic moved via the Texarkana & Fort Smith Railway. It is not believed that the law permits the carriers thus to give or withhold rates at their pleasure.

We submit that because the exception leaves to the carriers the privilege of superseding State rates to and from and between points according to their pleasure, or what, in practice, amounts to the same thing, the power to adjudicate what Texas rates have been or are depressed or affected by water competition, and the power to determine what points in Texas are entitled to such rates,—it renders the entire order indefinite to such an extent as to make it void.

Wherefore, appellants pray that the decree of the district court be reversed, that judgment be entered for appellants, that appellants recover all costs of the proceeding, and that they have such other relief to which they may be entitled.

Respectfully submitted,

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